SBI

The banker to every Indian

A GUIDE TO

NRI TAXATION & FEMA

NRI SERVICES, PBBU
CORPORATE CENTRE

PREFACE

Dinesh Khara
Chairman

Dear Patron ,

SBI is well aware of the vital contributions made by its Global Citizens to the financial, social and economic sectors in the growth story of our Country. You are important to us, and we are committed to provide you with an unparalleled customer service and innovative products. Our 434 specialized/intensive NRI Branches in India, Foreign Offices in 29 Countries, 45 Exchange Houses and five banks in the Middle East work hard to facilitate NRI services and serve as our extended arms to reach you. We strive to be available to you 24/7 through our hassle -free digital offerings like YONO and internet banking platform. We have also set up a Global NRI Centre (GNC) at Ernakulam, to render a one-step solution for all your non-financial service requirements. We further acknowledge the significant contribution of the NRI community to the growth of our nation.

The investments made by you in your motherland are governed by the Foreign Exchange Management Act (FEMA) and taxation laws that may sometimes appear confusing and daunting. In an effort to demystify these laws and empower our NRI customers, we have compiled this information booklet. This handbook will serve as a reference guide and help you to take informed decision while investing in India. We hope that this handbook will enrich you with the necessary and relevant information you may need while investing your hard-earned money. We have made a sincere effort to cover all relevant and important topics which will serve as a guide to better manage and understand your financial responsibilities. However, this book is not a substitute to professional advice.

I am happy to release this useful handbook to you, our esteemed patron. The digital copy of the same is also available on our Bank's website https://bank.sbi

Dinesh Khara
Chairman

Corporate centre, Mumbai
2nd January 2024

PREFACE

Vinay M. Tonse
Managing Director
(Retail Business & Operations)

India is one of the fastest growing economies in the world. The contribution of NRIs to the Indian economy has been significant. Remittances have become a major component of the forex earnings and GDP of the country. NRIs' contribution results in national savings, increase in forex reserves and investment in various sectors such as education, health, infrastructure etc. This adds to the overall economic growth of India. To enable the NRIs to have a clear understanding of the relevant provisions of the Income-Tax Act and the FEMA regulations and also to ensure regulatory compliances by NRIs, it is crucial for them to have deep understanding of the provisions and their compliance within the specified time frame. Any non-compliance may result in financial penalties and litigations detrimental to the interest of NRIs.

With a view to empower our customers with clear understanding and knowledge, we have come up with a booklet on various regulations related to Income Tax Act and FEMA. This booklet will be a source of guidance for NRI customers. This book gives a holistic view of tax and regulatory matters related to NRIs and educates them on value investing options available in India.

Overall, this booklet will serve as a valuable resource for NRIs looking to invest in India and guide them with practical examples to maximize their investment returns while simplifying the complexities of taxation and compliance. It narrates the laws in simple understandable language which will help NRIs in taking decisions on compliance matters and carving out the financial path for them and their near and dear ones.

We at State Bank of India, are committed to ensure that our policies, products and programs are all aligned towards enriched experience of our NRI customers through 434 dedicated specialized NRI branches/NRI Intensive branches in India and foreign offices in 29 countries. All our outfits are equipped with the capability of serving our esteemed clientele in most efficient manner. Global NRI Centre (GNC) has been set up at Ernakulam to cater all non-financial need of NRI customers.

We are elated to share this informative booklet with you and looking forward for your feedback and ideas about the initiative. Digital copy of booklet will be made available on our Bank's website https:// bank.sbi.

Vinay M. Tonse
Managing Director
(Retail Business & Operations)

Corporate Centre, Mumbai
2nd January 2024

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PART - A
NRI TAXATION

Introduction:

Taxation has always been a vexed topic for many – be it resident or non-resident. Multitude of portals on the web steaming out analysis of various tax provisions have considerably aided the layman. I too have attempted to place before you a compilation of tax concepts in a simple and concise manner.

THE MYTH – I am a non-resident, PIO Card Holder, OCI Card Holder, Green Card Holder, US Citizen so I don't have to pay tax in India since I am paying tax on the same income in my country of residence. The reality is generally the opposite.

ALWAYS remember that if you are earning any income from a source or an asset in India, the Indian government has the sovereign right to tax you. Probably due to tax treaties, you may get some relief or exemption. Even the domestic tax laws may give you some relief or exemptions.

The tax discussion in the following pages have been strictly restricted to a NRI earning income in India, like interest, dividends, pension, rentals, capital gains, etc. Consciously, the provisions relating to business transactions have been kept aside, the idea being to make the book simple and short.

Taxation being such a debatable topic entangled in litigation issues, this book is not a substitute to professional advice. It is only an attempt to give a broad overview of the taxation for non-residents like you and to prepare you to the TRUTH – you are taxable for most of the income earned in India just like me as a resident.

Important for NRIs

As per Rule 12AB, new additional conditions imposed due to which residents & NRIs will have to file Income Tax Return even if their taxable income is less than Rs.2,50,000/-. The conditions inter alia are:

(a) If the aggregate of tax deducted at source / tax collected at source is twenty-five thousand rupees or more; or

(b) The deposit in one or more savings bank account of the person, in aggregate, is rupees fifty lakh or more during the previous year.

SCOPE OF TOTAL INCOME AND ITS TAXABILITY

Income may arise or accrue in India or outside India. By fiction of law, some incomes are deemed to accrue or arise in India even if the transaction happens outside India but the underlying assets are located in India. The taxability of such income, whether accruing in India, arising in India or deemed to accrue or arise in India depends on the residential status of the Individual as tabulated below:

Sr. No.	Nature of Income	Taxability in the hands of		
		Ordinarily Resident	RNOR	Non-Resident
1	Income received or deemed to be received in India in the accounting year, by or on behalf of such person	Taxable	Taxable	Taxable
2	Income which accrues or is deemed to accrue or arise in India during the accounting year, even if the income is received outside India	Taxable	Taxable	Taxable
3	Income which accrues or arise outside India during the accounting year, even if it is not received in or brought into India	Taxable	Not Taxable	Not Taxable

The above tabulation is only a generalised presentation subject to few exceptions.

Income Deemed to Accrue or Arise in India

Section 9(1), by fiction, deems certain income, in the circumstances mentioned therein, as income accruing or arising in India. The fiction embodied in these provisions does not apply to the income which actually accrues or arises to the assessee in India. **By these provisions, certain income accruing or arising outside India is sought to be brought within the net of the income tax.**

Few examples are as under:

- **Capital gain arising on transfer of property situated in India.**
- **Income from business connection in India.**
- **Income from salary in respect of services rendered in India.**
- **Salary received by an Indian national from Government of India in respect of service rendered outside India. However, allowances and perquisites are exempt in this case.**

Income from any property, asset or other source of income located in India.

Dividend paid by an Indian company.

Interest received from Government of India.

Interest received from a resident is treated as income deemed to have accrued or arisen in India in all cases, except where such interest is earned in respect of funds borrowed by the resident and used by resident for carrying on business/profession outside India or is in respect of funds borrowed by the resident and is used for earning income from any source outside India.

Interest received from a non-resident is treated as income deemed to accrue or arise in India if such interest is in respect of funds borrowed by the non-resident for carrying on any business/profession in India.

Royalty/fees for technical services received from Government of India.

Royalty/fees for technical services received from resident is treated as income deemed to have accrued or arisen in India in all cases, except where such royalty/fees relate to business/profession carried on by person outside India or earning any other source of income outside India.

Royalty/fees for technical services received from non-resident is treated as income deemed to have accrued or arisen in India if such royalty/fees is for business/profession carried on by that person in India or earning any other source of income in India.

Section 9 has been amended by inserting any new clause to say that any sum of money paid by a person resident in India to a non-resident individual on or after 5 July 2019 shall be deemed to accrue or arise in India. Also, with effect from 1 April 2023, any sum of money paid to a person not ordinarily resident in India shall also be deemed to accrue or arise in India.

Refer the chapter on "Taxation of Gifs" to understand the implication of this amendment.

Residential status under Income Tax Act, 1961

Section 6 of the Income Tax Act, 1961 defines 'residential status'. It is the residential status which decides the taxability of income.

1. There is a difference in the definition of "Residential Status" defined under (a) Income Tax Laws; and (b) FEMA.

2. It is very important to ascertain the "residential status" on a yearly basis, especially in the case of seafarers, wherein the status may change regularly due to their nature of employment.

3. As per Income Tax Act, 1961, an individual is termed as:

(a) "Resident"; or

(b) "Deemed to be Resident"; or

(c) "Resident but not ordinarily resident" [RNOR]; or

(d) "Non-Resident"

4. There is always a common tendency to search for 'Non-Resident' definition or in other words what conditions must be satisfied to become non-resident. However, the Indian Income tax Act approach is to define who is a 'Resident' and accordingly, those who do not satisfy the definition of 'Resident' will automatically be termed as "Non-Resident".

5. Pay specific attention to the words "An individual" or "An individual being an Indian citizen". There is a significant difference between the two while determining the residential status.

6. Section 6, has various clauses/sub-clauses which defines the term "resident in India" under various situations. Therefore, it is important to know which clause is applicable to you. Herein below 6 categories have been mentioned (a) to (e). Select the correct category applicable to you and refer to the corresponding clause mentioned therein.

   (a) Individuals being Indian citizen who leaves India for employment (Refer para 8)

   (b) Individuals being Indian citizen who leaves India for employment as a member of Indian ship (Refer para 8)

   (c) Individuals being Indian citizen or Person of Indian origin (PIO) who being outside India comes on a visit to India (not having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year) - (Refer para 9)

   (d) Individuals being Indian citizen or PIO who being outside India comes on a visit to India (having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year) - (Refer- para 10)

(e) Individuals being Indian citizens (PIO excluded) not liable to tax in any other country (Refer- para 11)

(f) Individuals not covered in (a) to € above. (Refer- para 7)

RESIDENT IN INDIA

7. An individual is resident in India if he satisfies ANY ONE of the basic condition:

(a) If during the relevant previous year, he is physically present in India for a period aggregating to 182 days or more; or

(b) If he is physically present in India for a period aggregating to 365 days or more in the 4 immediately preceding years and 60 days or more in the relevant previous year.

If the individual satisfies condition (a) then he need not look at condition (b).

8. In the case of an individual being an Indian citizen who leaves India in the relevant previous year:

(i) As a member of the crew of an Indian ship; or

(ii) For the purpose of EMPLOYMENT OUTSIDE INDIA, the basic conditions are slightly different as under:

Basic conditions:

(a) If during the relevant previous year, he is physically present in India for a period aggregating to 182 days or more; or

(b) If he is physically present in India for a period aggregating to 365 days or more in the 4 immediately preceding years and 182 days or more in the relevant previous year.

9. In the case of an individual being an Indian citizen or a person of Indian origin (not having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year), being outside India who comes ON A VISIT TO INDIA, the basic conditions are as under:

Basic conditions:

(a) If during the relevant previous year, he is physically present in India for a period aggregating to 182 days or more; or

(b) If he is physically present in India for a period aggregating to 365 days or more in the 4 immediately preceding years and 182 days or more in the relevant previous year.

10. In the case of an individua being an Indian citizen or a person of Indian origin (having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year) being outside India who comes ON A VISIT TO INDIA, the basic conditions are as under:

Basic conditions:

(a) If during the relevant previous year, he is physically present in India for a period aggregating to 182 days or more; or

(b) If he is physically present in India for a period aggregating to 365 days or more in the 4 immediately preceding years and 120 days or more in the relevant previous year.

11. DEEMED TO BE RESIDENT:

An individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year shall be deemed to be resident in India in that previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

It is clarified that in case of an Indian citizen who becomes deemed resident of India under this provision, income earned outside India by him shall not be taxed in India unless it is derived from an Indian business or profession.

RESIDENT BUT NOT ORDINARILY RESIDENT" [RNOR]

12. Once the Individual qualifies as "Resident in India". The next step is to ascertain whether the individual is (a) Ordinarily Resident; or (b) Not Ordinarily Resident in India (RNOR). The RNOR status is very important for returning Indians because under this status there are some tax exemptions available to them.

13. An individual (not covered under 14 & 15 below) qualifies as 'RNOR' if he fulfills any one of the two alternative conditions laid down as under:

(i) He has been non-resident in India in nine out of the ten previous years preceding the relevant previous year; or

(ii) He has during the seven previous years preceding that year been in India for a period aggregating to 729 days or less

14. An individual being a citizen of India, or a person of Indian origin, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, qualifies as RNOR if, he has: been in India for a period or periods amounting in all to one hundred and twenty days or more but less than one hundred and eighty-two days during the previous year.

15. An Individual qualifying as "deemed to be Resident" (Refer para 10) will always be RNOR.

INCOME OF NRI AND ITS TAXABILITY

Generally speaking all the income earned by a NRI in India through its assets and investment in India is taxable in India just like a resident Indian. There is no significant difference in the way the tax is calculated, except for few instances.

The significant difference between resident and non-resident taxation is with respect to TDS (Withholding tax). In the case of non-residents, the TDS is very much on a higher side in some instances as compared to TDS applicable to resident Indian.

Below we discuss few common types of income earned by NRIs in India and its taxability:

1. **Interest on NRO accounts (Deposit and saving account):** The interest earned on such accounts is taxable in India as per the provisions of Section 195 of the tax Act.
2. **Interest on NRE accounts ((Deposit and saving account):** The interest earned on such accounts is exempt in India as long as the status of the account holder is NRI as per FEMA regulation and not Income Tax Act.
3. **Interest on FCNR(B) deposit:** The interest earned on such account is exempt from tax in India in the hands of NRI. The NRI status must be as per Income Tax Act and not FEMA. Further, the same is also exempt in the hands of returning Indian having RNOR status.
4. **Maturity proceeds of PPF and interest on PPF account:** Not taxable.
5. **Maturity proceeds of Insurance policies:**

   The taxability or exemption of the proceeds depends upon the conditions of Section 10(10D) of the Income Tax Act. As per the section:

   (a) For policies issued before 01.04.2012 – if the premium paid on the policy does not exceed 20% of the sum assured - Maturity proceeds including bonus is exempted.

   (b) For policies issued after 01.04.2012 – if the premium paid on the policy does not exceed 10% of the sum assured - Maturity proceeds including bonus is exempted.
6. **Pension income:** Pension earned and received in India is taxable in India.
7. **Rental Income:**

   (a) The rental income is taxed under the head – "Income from house property".

   (b) NRIs can hold any number of properties in India. The income from property are taxed under three categories as under:

   (i) Self occupied property

   (ii) Let-out property

   (iii) Deemed to be let-out property

(c) Out of the multiple properties, any **TWO (w.e.f 01/04/2019)** property will be assumed to 'self-occupied', irrespective of the fact that the NRI is not residing in India. The income from such property will be assumed to be NIL.

(d) All other properties, other than mentioned in (c) above will be "let-out" or "Deemed to be let out" properties.

(e) It must be remembered that only property of which the possession is received can be taxed under the head - "Income from house property". In other words, property under construction does not enter the ambit of taxation.

(f) In the case of "let-out" properties, the actual rent received is taxable.

(g) In the case of "deemed to be let-out" properties, a notional rent is presumed to be received and taxed accordingly (even if, none of the property is let-out in the real sense).

(h) There are specific and limited deduction given while calculating the taxable income under the head "Income from house property" as under:

Particulars	Self Occupied Property	Let-Out Property	Deemed to be Let-Out Property
Rental Income	NIL	Actual rent	Deemed rent
Less: Municipal taxes paid	Not available	Available	Available
Less: 30% adhoc deduction	Not available	Available	Available
Less: Interest on borrowed capital	Available	Available	Available
Taxable income/loss	xxxx.xx	xxxx.xx	xxxx.xx

(i) The municipal taxes deduction is available on "payment basis" irrespective of the year to which it pertains.

(j) The 30% ad hoc deduction is to be calculated on the resultant figure after municipal taxes deduction.

(k) Interest on borrowed capital/housing loan interest is available on 'accrual basis'. The maximum deduction permissible for self-occupied property is Rs.2,00,000/-.

(l) In the case of "let-out" and "deemed to be let-out" property there is no restriction on the amount of interest deduction. However, the total loss after aggregating all the income under the above 3 categories will be restricted to Rs.2,00,000/- in a year. This loss can be set off against other income. In other words, if the aggregate loss under the 3 categories is Rs.4.5 lakhs, then only Rs.2 lacs will be allowed as loss under the current year and the balance loss of Rs.2.5 lakhs will be carried forward to the subsequent 8 years for setting-off only against income from house property.

(m) Deduction on account of interest on loan cannot be claimed when the house is under construction. It can be claimed only after the construction is finished. The period from borrowing money until construction of the house is completed is called pre-construction period. Interest paid during this time can be claimed

as a tax deduction in five equal installments starting from the year in which the construction of the property is completed.

(n) The interest deduction of Rs. 2,00,000/- in case of Self Occupied Property is subject to satisfaction of both the conditions as under

(i) The loan is taken on or after 1 April 1999

(ii) The purchase or construction is completed within 5 years from the end of the FY in which loan was availed

The interest deduction is restricted to Rs. 30,000 if the above conditions are not satisfied.

Further, the total deduction for pre-construction period interest and the current period interest shall not exceed two lakh rupees.

(o) Suppose the NRI transfers the house property to the spouse for inadequate consideration and the spouse earns rental income on such property. The rental income will be taxed in the hands of the NRI and not the spouse because as per Section 27 of the Income Tax Act, the NRO will be the deemed owner of the property.

(p) Generally, the carried forward of loss is permissible provided the income tax return is filed by the due date. However, losses from house property is an exception to this rule and can be carried forward to future years even if return is not filed on time.

(q) Consider a situation wherein you have sold the property and subsequently, you receive some rent arrears/unrealised rent. Such income will continue to be taxed in the year of receipt under the head - "Income from house property" even though you are not the owner of that property. The only deduction available against such rent arrears/unrealised rent is the 30% ad hoc deduction.

(r) The 30% ad hoc deductions and interest on loan deduction mentioned above is per person. Therefore, in the case of joint holding, each owner is entitled for such deduction.

(s) **Rental income from sub-letting**:

Rental income in the hands of owner is charged to tax under the head "Income from house property". Rental income of a person other than the owner cannot be charged to tax under the head "Income from house property". Hence, rental income received by a tenant from sub-letting cannot be charged to tax under the head "Income from house property". Such income is taxable under the head "Income from other sources" or profits and gains from business or profession, as the case may be.

(t) **Rental income from a shop**:

Rental income from a property, being building or land appurtenant thereto, of which the taxpayer is the owner is charged to tax under the head "Income from house property". To tax the rental income under the head "Income from house property", the rented property should be building or land appurtenant thereto. Shop being a building, rental income will be charged to tax under the head "Income from house property".

Capital Gains & Taxability

This writeup/compilation is restricted to capital gains and its taxation in the hands of non-residents arising on or after 01.04.2018 out of:

(a) Sale of listed equity shares

(b) Sale of unlisted equity shares

(c) Sale of equity shares acquired through ESOP scheme.

(d) Sale of units of listed mutual funds – Equity oriented

(e) Sale of units of mutual funds – Debt oriented

(f) Sale of immovable properties

Few basic pointers:

1. When a capital asset is sold, it may result in capital gains/loss.
2. The period of holding of the asset determines whether the gain/loss is Long Term or Short Term.
3. The tax rates of capital gains depends on whether the capital gain is a long-term gain or short term gain.
4. The methodology of calculation of capital gains differs for different assets.
5. If the assets are acquired through foreign exchange, there are different provisions to calculate the capital gains.
6. The tax rates are different for Long Term Gains or Short Term Gains. Further, the rates also depend upon the type of asset sold. (i.e., whether equity shares or immovable property)

1. Sale of listed equity shares

a. Effective from 01.04.2018, the newly introduced Section 112A for taxation of long term capital gains is applicable on sale of listed equity shares through the stock exchange.

b. Section 112A is applicable when STT (Securities Transaction Tax) is paid at the time of purchase and sale of shares. Even in cases where shares are acquired through inheritance, gift, ESOP, etc., the provisions of section 112A may be applicable . In other words, the Section 112A can be applied only if the condition's of the Section 112A is satisfied.

c. If the listed equity shares are sold after holding them for more than 12 months, the resulting loss or profit will qualify as "long term". In other words, if such shares are sold within 12 months the loss or profit will be termed as "short-term".

d. In the case of listed equity shares acquired by way inheritance or gift, the period of holding will commence from the date of acquisition by the deceased/donor.

e. Effective from 01.04.2018, the "cost of acquisition" of listed shares will be the higher of:

(i) The actual cost of such investments;

(ii) The lower of:

(a) Highest price quoted on the recognized stock exchange on 31 January 2018;

(b) Sale price.

f. In the case of listed equity shares acquired by way inheritance or gift, the actual cost will be the cost in the hands of the deceased/donor. In this case also the clause (3) mentioned above, will apply.

g. The capital gain/loss will be the difference between the "cost of acquisition" and sale price.

h. The aggregate of long term capital gains exceeding Rs.1,00,000/- during the financial year after setting off the long term capital loss will be taxed @ 10%.

i. The long term capital loss, if any after setting of long term gains, will be carried forward for 8 subsequent years.

j. If the sale results in "short Term capital gain", the same shall be taxed @ 15% as per provisions of section 111A .

k. Indexation benefit is not available under Section 112A.

l. Surcharge (if applicable) and Education Cess @ 4% shall be levied on the basic tax rate mentioned above.

m. The tax liability on long term capital gains can be reduced by investing in residential property subject to conditions mentioned in Section 54F.

n. The above stated methodology/facts are applicable for shares:

(i) Purchased and sold through stock exchange;

(ii) Inherited and subsequently sold through stock exchange; and

(iii) Acquired through gift and subsequently sold through stock exchange.

2. Sale of unlisted equity shares

a. If the unlisted equity shares are sold after holding them for more than 24 months, the resulting loss or profit will qualify as "long term". In other words, if such shares are sold within 24 months the loss or profit will be termed as "short-term".

b. Indexation is a process by which the cost of acquisition is adjusted against inflationary rise in the value of asset. For this purpose, Central Government has notified cost inflation index. The benefit of indexation is available only to long-term capital assets.

c. Indexed cost of acquisition is computed with the help of following formula :

$$\text{Cost of acquisition} \times \frac{\text{Index of the year of sale}}{\text{Index of the year of purchase}}$$

(Cost multiplied by the index of the year of sale and divided by the index of year of purchase)

d. The capital gain/loss will be the difference between "sale consideration" and "Indexed Cost of acquisition".

e. On long term capital gain, the applicable tax rate is 20%. The short term capital gain will be taxed along with other income at the applicable slab rate. The maximum rate being 30% at present.

f. The tax liability on long term capital gains can be reduced by investing in residential property subject to conditions mentioned in Section 54F.

3. Sale of equity shares acquired through ESOP scheme

a. The Income Tax Act, 1961 has laid down the following two stages of taxation for employees in respect of shares allotted to them under an ESOP:

(i) Upon allotment of shares after the employee exercises his option on the completion of the vesting period; and

(ii) When the shares allotted to the employee are sold by him on the stock exchange.

b. In the first stage, the difference between the Fair Market Value ("FMV") of the shares on the date of exercise and the exercise / subscription price paid by the employee, if any, is taxable as perquisite under the head 'Income from salary' on the date of allotment of shares.

c. When he sells the shares, the employee will be taxed for capital gains. The capital gains is computed as the difference between the sale proceeds and FMV of the shares that were already considered by the employer while computing the perquisite value.

d. The period of holding, the mode of computation, etc remains the same as mentioned under "Sale of listed equity shares". The only difference being the 'Cost of acquisition' will be the 'FMV' of the shares on the date of exercise of ESOP.

4. Sale of units of listed mutual funds – Equity oriented

a. Equity oriented fund and balanced fund are treated at par for the purpose of tax.

b. If 65% or more of the corpus of a mutual fund scheme is invested in equities, it is treated as equity scheme for the purpose of taxation.

c. ELSS scheme is also treated as 'equity fund'. However, ELSS scheme has a 3 year lock in period.

d. Arbitrage mutual funds, which invest in arbitrage opportunities in cash and derivative segments of the equity markets, are treated as equity funds for the purpose of taxation.

e. The holding period to qualify for long term/short term, the mode of computation and tax liability is the same as applicable to sale of listed equity shares.

5. Sale of units of listed mutual funds – Debt oriented

a. Funds which do not qualify as equity fund are termed as 'debt fund'.

b. Debt funds are referred to by many names such as:

(i) Dynamic Bond Funds,

(ii) Income Funds

(iii) Short-Term and Ultra Short-Term Debt Funds

(iv) Liquid Funds

(v) Gilt Funds

(vi) Fixed Maturity Plans (FMPs)

c. International funds (which invest in stocks abroad) and fund of funds (a mutual fund scheme that invest in different mutual funds) are considered as debt funds.

d. If the units of debt oriented funds are sold after holding them for more than 36 months, the resulting loss or profit will qualify as "long term". In other words, if such units are sold within 36 months the loss or profit will be termed as "short-term".

e. All the conditions and computation mentioned under "sale of unlisted equity shares" will apply in this case. The tax rate also being the same @ 20% after indexation for long term gains.

6. Special provisions for computation of capital gains for shares & debentures of Indian company acquired through foreign exchange.

Capital gain shall be determined as under:

Full Value of Consideration (X)	Find out sale consideration in Indian currency and convert it into same foreign currency, which was used to acquire the capital asset, at average exchange rate (*) on the date of transfer.
Cost of acquisition (Y)	Find out the cost of acquisition in Indian currency and convert it into foreign currency at average exchange rate on the date of acquisition.
Expenditure on sale (Z)	Find out the expenditure on transfer in Indian currency and convert it into same foreign currency at average exchange rate on the date of transfer (not on the date when expenditure is incurred).
Capital gain (X-Y-Z)	The capital gains as computed in after reducing the cost of acquisition and expenditure from the full value of consideration shall be reconverted into Indian currency at buying rate (**) on the date of transfer.

(*) Average exchange rate means the average of the telegraphic transfer buying rate and telegraphic transfer selling rate of the foreign currency initially utilised in the purchase of capital asset.

(**) Buying rate is the telegraphic transfer buying rate of such currency

The benefit of indexation is not available under this provision. [1st proviso to Section 48]

7. Sale of immovable properties:

a. It is presumed that the property sold is a 'residential property' and further, the sale is from a non-resident (seller) to a resident (purchaser).

b. If a 'residential property' held by the NRI for more than 24 months is sold, the resulting gain will be long term in nature. In other words, property sold within 24 months will qualify as 'short term'.

c. Tax benefits are available only for 'long term gains'. Therefore it makes sense to hold a property for more than 24 months before selling the same.

d. Irrespective of the tax liability of the NRI, the resident purchaser is under an obligation to deduct tax at source out of the total consideration payable to the NRI seller.

e. It is very important for the NRI seller to understand the obligation of the purchaser. This will avoid misunderstanding between the parties involved at a later stage. The obligation of the purchaser is as under:

(1) The purchaser must have a TAN (Tax Deduction Account Number) and the seller must have a PAN (Permanent Account Number). If the same is not available, necessary application for allotment of the same must be done.

(2) Whether, the seller is going to make a profit or loss on sale of property, the purchaser must deduct tax at source (TDS) under Section 195 of the Income Tax Act, 1961.

(3) The TDS is applied on the total sale price and not on the capital gain. The TDS rate is 20% (on long term capital gains) and 30% (on short term capital gains) plus surcharge as applicable plus Cess.

(4) The purchaser must pay the tax deducted to the Income Tax dept and thereafter file quarterly TDS return with the tax dept.

(5) The purchaser will issue TDS certificate (Form 16A) to the seller. The issuance of such certificate is possible only if the seller has a PAN.

(6) The seller has an option to approach his tax officer and make an application for lower tax or not tax deduction certificate. This process may take almost a month. Once a lower or no tax deduction certificate is issued, the purchaser is duty bound to deduct tax at the rate mentioned in the certificate.

f. For arriving at the capital gain, the following parameters must be calculated:

(a) Period of holding: and

(b) Cost of acquisition.

g. Period of holding: The controversy here is whether, the period of holding should start from the date of agreement or from the date of possession. The most conservative approach, to avoid litigation, is to consider the holding period starting from the date of possession. There are various scenarios and the logic for of calculating the holding period may differ on a case to case basis. There are practical situation wherein the non-resident assumed the gains as "long-term" and the tax officer held it as "short-term". Such situation has a huge tax impact. In the case of property acquired through inheritance or gift, the period of holding by the previous owner is also to be added to determine whether held for more than 24 months or not.

h. Cost of acquisition: This is the purchase price paid to acquire the property. All incidental expenses directly attributable to the purchase transactions should be added to arrive at the cost of acquisition. E.g. Stamp duty and registration fees paid, brokerage paid, etc can be added to the cost of acquisition. In the case of property acquired through inheritance or gift, the cost to the previous owner is to be taken as the cost of acquisition.

i. Cost of acquisition for property acquired prior to 01.04.2001: In such situation, the seller has an option to substitute the value of the property as on 01.04.2001 as the "cost". He

will have to obtain a valuation certificate from a registered valuer. In the case of ancestral property or very old property, it makes sense to obtain a valuation as on 01.04.2001 resulting in substantial reduction in taxable capital gains.

Improvements to the property can also be added to the cost of acquisition. However, what is improvement and whether all types of improvements can be added to the cost is highly controversial. Generally expenses on improvements to the property incurred immediately after acquiring the property to make it habitable to the standard of living of the purchaser can be considered as allowable improvements to the property and accordingly such expenses can be added to the cost of the property.

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k. Indexed cost of acquisition: Once the cost of acquisition is calculated, the same is to be adjusted for inflationary impact. The indexation formula mentioned under "sale of unlisted equity shares" is used to arrive at the indexed cost of acquisition. Indexation benefit available only for property held for more than 24 months. In the case of property acquired prior to 01.04.2001, the value arrived as on 01.04.2001 will be considered as the cost and accordingly indexed.

l. The Capital gain is calculated as the difference between "sale price" and "Indexed cost of acquisition" in the case of property held for more than 24 months. For property held for less than 24 months and sold, the capital gain is calculated as the difference between "sale price" and "cost of acquisition".

m. The basic tax rate for capital gain is 20%. This is to be applied on the long term capital gain In the case of short-term capital gain, the same will be taxed as per tax slabs applicable to the seller, the maximum being 30%.

n. In the case of long term capital gain, the seller, has the option of avoiding the taxes completely or partially by investing "the capital gains" as under:

   (i) Purchase another 'residential' property within 2 years from the date of sale of old property, or construct another 'residential' property within 3 years.

   (ii) Purchase another 'residential' property before the date of sale of old property such that the time gap between the two transactions should not exceed 12 months.

   (iii) Purchase certain specified bonds (REC bonds or NHAI bonds) within 6 months from the date of sale of old property.

   (iv) A combination of (i) & (iii) or (ii) & (iii).

o. On sale of property, there is an obligation to file Income Tax Return by 31st July. Assuming that the sale transaction took place on 21st November 2022, (FY 2022-23), the due date for filing the tax return for FY 2022-23 will be 31st July 2023. The amount of capital gains amount not utilised by 31st July 2023, will have to be parked in a separate bank account under the capital gain account scheme. This must be done before filing the tax return and before 31st July 2023. By parking funds in the capital gain account scheme, the tax department presumes that the same is utilised for acquiring the new property and accordingly the capital gain exemption is given while computing your tax return.

p. Once a capital gains account is opened, the banker will ensure that the funds are used for making payments towards the new property. There are practical situation wherein the seller opens the capital gains account and thereafter decides not to buy a property for various reasons. In such a situation, the seller will have to get the approval of his tax officer to close the account. The tax officer may ask him to pay the tax accordingly.

Miscellaneous:

1. Since "period of holding' is very crucial for determining 'long term' and 'short term' transactions, below tabulation list of how to determine the period of holding in various situation:

Different situations	How to calculate the period of holding
When an asset is acquired by gift, will, succession, inheritance or the asset is required at the time of partition of family or under a revocable or irrevocable trust.	The period for which the asset was held by the previous owner should be included
Allotment of shares in amalgamated Indian company in lieu shares held in amalgamating company	The period of holding shall be computed from the date of acquisition of shares in the amalgamating company.
Right shares	The period of holding shall be computed from the date of allotment of right shares.
Bonus shares	The period of holding shall be computed from the date of allotment of bonus shares.
Issue of shares by the resulting company in a scheme of demerger to the shareholders of the demerged company	The period of holding shall be computed from the date of acquisition of shares in the demerged company.
Flat in a co-operative society	The period of holding shall be computed from the date of allotment of shares in the society.
Sweat equity shares allotted by employer	The period of holding shall be reckoned from the date of allotment or transfer of such equity shares.

Conversion of preference shares into equity shares	The period of holding of equity shares shall include the period for which preference shares were held by the assessee
Units allotted to an assessee pursuant to consolidation of two or more scheme of a mutual fund as referred to in Section 47(xviii)	The period of holding of such units shall include the period for which the unit or units in the consolidating scheme of the mutual fund were held by the assessee.
Shares in a company acquired by the non-resident assessee on redemption of Global Depository Receipts referred to in Section 115AC(1)(b)	The period of holding of such shares shall be reckoned from the date on which a request for such redemption was made.

2. Carry forward and set off of capital loss:

i. If loss under the head "Capital gains" incurred during a year cannot be adjusted in the same year, then unadjusted capital loss can be carried forward to next year.

ii. In the subsequent year(s), such loss can be adjusted only against income chargeable to tax under the head "Capital gains", however, long-term capital loss can be adjusted only against long-term capital gains.

iii. Short-term capital loss can be adjusted against long-term capital gains as well as short-term capital gains. Such loss can be carried forward for eight years immediately succeeding the year in which the loss is incurred.

iv. Such loss can be can carried forward only if the return of income/loss of the year in which loss is incurred is furnished on or before the due date of furnishing the return.

3. Cost inflation Index for long term capital gain calculation:

Sl. No.	Financial Year	Cost Inflation Index	Sl. No.	Financial Year	Cost Inflation Index
1	2001-02	100	13	2013-14	220
2	2002-03	105	14	2014-15	240
3	2003-04	109	15	2015-16	254
4	2004-05	113	16	2016-17	264
5	2005-06	117	17	2017-18	272
6	2006-07	122	18	2018-19	280
7	2007-08	129	19	2019-20	289
8	2008-09	137	20	2020-21	301
9	2009-10	148	21	2021-22	317
10	2010-11	167	22	2022-23	331
11	2011-12	184	23	2023-24	348
12	2012-13	200			

Taxation of Gifts

1. A very common and frequent question running in the minds of the NRI's is the taxability of gifts.

From the taxation point of view, gift can be classified as follows:

(a) Any sum of money received without consideration, it can be termed as 'monetary gift'.

(b) Specified movable properties received without consideration, it can be termed as 'gift of movable property'.

(c) Specified movable properties received at a reduced price (i.e. for inadequate consideration), it can be termed as 'movable property received for less than its fair market value'.

(d) Immovable properties received without consideration, it can be termed as 'gift of immovable property'.

(e) Immovable properties acquired at a reduced price (i.e. for inadequate consideration), it can be termed as 'immovable property received for less than its stamp duty value'.

Gifts from NRIs to residents and vice versa in cash or in any other kind movable or immovable), exceeding Rs.50,000/- during a financial year may be taxed effective from 01.10.2009 (Section 56). The amount/value will be taxed in the hands of the recipient as "Income from other sources". The tax rate will be as per the applicable tax slab to that person.

However, the same is not taxed if the gift transaction is between "relatives" defined as under:

in the case of an individual—

(a) Spouse of the individual;

(b) Brother or sister of the individual;

(c) Brother or sister of the spouse of the individual;

(d) Brother or sister of either of the parents of the individual;

(e) Any lineal ascendant or descendant of the individual;

(f) Any lineal ascendant or descendant of the spouse of the individual;

(g) Spouse of the person referred to in items (b) to (f); and

The taxability of the gift is determined on the basis of the aggregate value of gift received during the year and not on the basis of individual gift. Hence, if the aggregate value of gifts received during the year exceeds Rs. 50,000, then total value of all such gifts received during the year will be charged to tax (i.e. the total amount of gift and not the amount in excess of Rs. 50,000).

Gift received on the occasion of marriage of the individual is not charged to tax. Apart from marriage there is no other occasion when monetary gift received by an individual is not charged to tax. Hence, monetary gift received on occasions like birthday, anniversary, etc. will be charged to tax.

Important amendment to Section 9 impacting 'Gift Transaction.

Under the provision of Section 56, a gift (of money or property) is taxed in the hands of the recipient except for certain exemption given when the transactions were between close relatives.

It was observed that certain gift transaction by the resident to an unrelated non-resident and resident but not ordinarily resident (w.e.f 1 April 2023) was escaping the provisions of Section 56. The non-resident and resident but not ordinarily resident would take a plea that the gift did not 'accrue or arise in India' and accordingly cannot be taxed in India.

To plug the above misuse, the Section 9 is amended to include t income arising outside India being in the nature of transaction mentioned in Section 56 will be "deemed to accrue or arise in India" and accordingly will be taxed in India.

Deductions from total income available to NRIs

Once the NRI compiles the various taxable income in India, the next obvious question is whether he is entitled for any deduction from the total income?

NRIs are entitled to deductions from their total taxable income on account of various investments or payments done. There are series of Section starting from Section 80C and ending at 80TTA which covers various investment avenues. It is not necessary that NRI will be permitted to invest in all the investment products listed in the various section. For example, NRI cannot invest in PPF as listed in Section 80C.

Some of the deductions generally available to NRIs are discussed below:

1. Section 80C gives maximum deduction of Rs.1,50,000/- from the total income for the below payments/investments:

   (a) Payments towards life insurance premium

   (b) Children's tuition fees paid to any school, college, university or other educational institution situated within India.

   (c) Repayment of housing loan (principal component of the EMI)

2. Section 80D gives deduction for the premium paid for health insurance policies up to Rs.25,000/50,000 subject to conditions mentioned therein.
3. Section 80E give deduction on account of interest paid (without any limits) on educational loan taken for himself, spouse, children or relative for whom he is the legal guardian. This deduction is available only for 8 consecutive years.
4. Section 80-G gives deductions of 50% or 100% on account of donations made to specified institutions.
5. Section 80TTA gives a deduction against saving bank interest up to a maximum amount of Rs.10,000/-.

Income not to be included in total income (Exempt Income)

Section 10 of the Income Tax Act, 1961 list out various incomes which are exempt from the ambit of taxation subject to conditions, if any, mentioned therein. Some of the income exempted in the hands of non-residents/NRIs is as under:

Sr. No	Section Reference	Particulars
1	10(4)(i)	Interest on bonds or securities notified before 01-06-2002 by the Central Government including premium on redemption of such bonds.
2	10(4)(ii)	Interest on money standing to the credit in a Non-resident (External) account in India.
3	10(4B)	Interest on notified savings certificates issued before 01-06-2002 by the Central Government and subscribed to in convertible foreign exchange.
4	10(6)(ii)	Remuneration received by Foreign Diplomats/Consulate and their staff (Subject to conditions)
5	10(6)(vi)	Remuneration received by non-Indian citizen as employee of a foreign enterprise for services rendered by him during his stay in India, if:
		a) Foreign enterprise is not engaged in any trade or business in India
		b) His stay in India does not exceed in aggregate a period of 90 days in such previous year
		c) Such remuneration is not liable to be deducted from the income of employer chargeable under this Act
6	10(8B)	Foreign income and remuneration received by an employee of the consultant as referred to in Section 10(8A) (contract of service must be approved by the prescribed authority before commencement of service).
7	10(15)(iid)	Interest on notified bonds (notified prior to 01-06-2002) purchased in foreign exchange (subject to certain conditions)
8	10(15)(iv)(fa)	Interest payable by scheduled bank on deposits in foreign currency where acceptance of such deposit by the bank is duly approved by RBI.
9	10(15)(viii)	Interest on deposit made on or after 01.04.2005 in an offshore Banking Unit referred to in Section 2(u) of the Special Economic Zones Act, 2005.
10	10(50)	Any income which is chargeable to equalization levy under Chapter VIII of the Finance Act, 2016.

Section 10 is a vast section. Only few specific clauses have been enumerated above. Each of the exemption is subject to conditions hence it is advised to refer to the original sections in its original form.

Miscellaneous matters

1. **Income Tax slab and tax rates for FY 2022-23 for NRIs:**

There are two tax slabs or tax regime available to the NRIs. They are free to choose any one at their discretion. They also have the option to between the two regime on a year-to-year basis.

There is no distinction between a NRI below the age of 60 or above the age of 60. The tax slab and the tax rates applicable to them remains the same. The concept of senior citizen is not applicable to NRI's.

The old tax slab is referred to as the "old or existing tax regime" and the new tax slab is referred to as the "new tax regime U/s.115BAC"

Old Tax Regime for FY 2022-23 & FY 2023-24	
Income Tax Slab	Income Tax Rate
Up to ₹2,50,000	Nil
₹2,50,001 - ₹5,00,000	5% above ₹2,50,000
₹5,00,001 - ₹10,00,000	₹12,500 + 20% above ₹5,00,000
Above ₹10,00,000	₹1,12,500 + 30% above ₹10,00,000

New Tax Regime u/s 115BAC for FY 2022-23 & FY 2023-24		
Income Tax Slab	**Income TaxRate (FY 2022-23)**	**Income Tax Rate (FY 2023-24)**
₹0 - ₹2,50,000	–	–
₹2,50,000 - ₹3,00,000	5%	–
₹3,00,000 - ₹5,00,000	5%	5%
₹5,00,000 - ₹6,00,000	10%	5%
₹6,00,000 - ₹7,50,000	10%	10%
₹7,50,000 - ₹9,00,000	15%	10%
₹9,00,000 - ₹10,00,000	15%	15%
₹10,00,000 - ₹12,00,000	20%	15%
₹12,00,000 - ₹12,50,000	20%	20%
₹12,50,000 - ₹15,00,000	25%	20%
>₹15,00,000	30%	30%

2. **Applicability of Surcharge & Education Cess to a NRI.**

(a) Surcharge is applicable on a case-to-case basis. It is not applicable in all cases.

(b) Surcharge is applicable depending on total income falling under various slab as under:

(a) Total income exceeds Rs.50,00,000/- but does not exceed Rs. 1 Crore	10% of Income Tax
(b) Total income exceeds Rs.1 Crore but does not exceed Rs. 2 Crores	15% of Income Tax
(c) Total income exceeds Rs.2 Crores but does not exceed Rs. 5 Crores **(enhanced surcharge)**	25% of Income Tax
(d) Total income exceeds Rs.5 Crores **(enhanced surcharge)**	37% of Income Tax

Enhancedsurcharge is not applicable on any capital gain on sale of equity share or equity oriented mutual fund covered under Section 111A (short term capital gain) and 112A (long term capital gain) or dividend income.

(c) Education cess is applicable in all cases @ 4%.

(d) The surcharge and cess is calculated as under:

Particulars		Surcharge Applicable				Surcharge Not Applicable			
Basic rate (say) is	(a)	10.00	15.00	20.00	30.00	10.00	15.00	20.00	30.00
Add: Surcharge @10% calculated on (a)	(b)	1.00	1.50	2.00	3.00	-	-	-	-
	(c)	11.00	16.50	22.00	33.00	10.00	15.00	20.00	30.00
Add: Education Cess @ 4% calculated on (c)	(d)	0.44	0.66	0.88	1.32	0.40	0.60	0.80	1.20
Effective tax rate		11.44	17.16	22.88	34.32	10.40	15.60	20.80	31.20

In the above (example) tabulation the surcharge is considered as 10%

3. **Advance Tax:** If the estimated tax liability of the NRI (including NRI senior citizens) for a financial year is Rs.10,000/- or more, then he is supposed to pay such estimated tax liability in 4 installments by the due dates as under:

Due dates	Amount payable
On or before 15th June	Not less than 15% of the estimated liability
On or before 15th September	not less than 45% of the estimated liability as reduced by the earlier installment paid.
On or before 15th December	not less than 75% of the estimated liability as reduced by the earlier installment paid.
On or before 15th March	balance of the estimated liability

The estimated tax liability is the total tax liability on the total taxable income after considering (deducting) the tax already deducted.

4. The wealth tax provisions have been abolished since 1st April 2015.

5. India does not have "Estate Duty Tax" or "Inheritance Tax" since 1985.

6. India does not have specific Gift Tax Act. The same was abolished in October 1998. However, section 56 of the Income Tax Act, 1961 covers within its ambit certain gift transaction and its taxability.

General format of a tax computation sheet

Tax Computation Sheet		
Name & Address of the Assessee: Mr. ABC Assessment Year : A.Y.2018-19 Status : Non-Resident		
Particulars		**Amount**
1. Salary		xxxx.xx
2. Income From House Property		xxxx.xx
3.Profits and gains from business or profession		xxxx.xx
4. Capital Gain		xxxx.xx
5. Income from other sources		xxxx.xx
Gross Total Income		xxxx.xx
Less: **Deduction under chapter VIA**		xxxx.xx
U/s. 80C	xxx.xx	
U/s. 80CCC	xxx.xx	
U/s. 80CCD	xxx.xx	
U/s. 80D	xxx.xx	
U/s. 80E	xxx.xx	
U/s. 80TTA	xxx.xx	xxxx.xx
Total Income		xxxx.xx
Tax Calculation		
Tax on total income		xxxx.xx
Add: Surcharge (if applicable)		xxxx.xx
		xxxx.xx
Add: Education Cess		xxxx.xx
		xxxx.xx
Les: Tax Deducted at Source (TDS)		xxxx.xx
		xxxx.xx
Less: Advance Tax & Self-Assessment Tax		xxxx.xx
		NIL

From the above format, is seen that the income, can be categorized under 5 heads only. The head 'Income from other sources' is a residual head. Any income not falling under the other heads of income will automatically get covered under 'income from other sources.'

Filing of Income Tax Returns

1. If an individual, being a non-resident has a total income exceeding Rs.2,50,000/- then he is under an obligation to file an Income Tax Return by 31st July.

2. Total income is calculated without giving effect to the provisions of section , 10A, 10B, 10BA 54, 54B, 54D, 54EC, 54F, 54G, 54GA, or 54GB or Chapter VIA (i.e., deduction under section 80C to 80U).

3. NRI's are also supposed to file income tax return if the below mentioned conditions are fulfilled (even though his income is below Rs.2,50,000/-):

   (a) If the aggregate of tax deducted at source and tax collected at source during the previous year, in the case of the person, is twenty-five thousand rupees or more.

   (b) The deposit in one or more savings bank account of the person, in aggregate, is rupees fifty lakh or more during the previous year.

4. The concept of OCI card holder has no relevance with respect to filing of tax return.

5. Exempt income need not be considered for arriving at the threshold limit of Rs.2,50,000/-

6. The fact that excess tax was deducted at source does not absolve the individual from filing a tax return.

7. The benefit of carry forward of losses is available only if the tax returns are filed on time. The only exception being loss under the head – Income from house property.

8. Non-residents are not required to report their assets and financial interests outside India.

9. **It's a MYTH that once a tax return is filed, the non-resident must continue filing the tax return failing which a tax notice will be served. The obligation to file a tax return must be reviewed on a year-to-year basis.**

10. There is a provision in the Indian Tax Act (Section 115G) which says that non-residents need not file the Indian Income-Tax Return if:

    (a) His total income in respect of which he is assessable under this Act during the previous year consisted only of investment income or income by way of long-term capital gains or both; and

    (b) The tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

This provision is not that easy to implement/use. The words used in the above section are to be carefully understood as under:

(i) "Investment income" means any income derived other than dividends referred to in section 115-O from a foreign exchange asset.

(ii) "Foreign exchange asset" means any specified asset which the assessee has acquired or purchased with, or subscribed to in, convertible foreign exchange.

(iii) "Specified asset" means any of the following assets, namely :—

(i) Shares in an Indian company;

(ii) Debentures issued by an Indian company which is not a private company as defined in the Companies Act.

(iii) Deposits with an Indian company which is not a private company as defined in the Companies Act.

(iv) Any security of the Central Government as defined in clause (2) of section 2 of the Public Debt Act, 1944 (18 of 1944);

(iv) Such other assets as the Central Government may specify in this behalf by notification in the Official Gazette.

(iv) "Long-term capital gains" means income chargeable under the head "Capital gains" relating to a capital asset, being a foreign exchange asset which is not a short-term capital asset;

Non-Resident Indians and PAN Card

1. Double taxation avoidance agreement (DTAA) also known as "tax treaty" or "tax convention" seeks to eliminate or reduce the incidence of double taxation of the same income in two or more separate tax jurisdiction.

2. There are certain transactions/activities for which NRIs cannot do without PAN; such as:

   (a) Tax payment

   (b) Income Tax Return filing

   (c) Preparation of Form 15CA/CB for remittance/repatriation

3. Form 60 is a tax form which can be submitted in lieu of PAN by NRIs.

4. For the undermentioned transaction NRIs must submit PAN or Form 60.

Sl. No.	Nature of transaction	Value of transaction
1	Sale or purchase of a motor vehicle or vehicle other than two wheeled vehicles.	All such transactions.
2	Opening an account with a banking company or a co- operative bank.	All such transactions
3	Opening of a demat account.	All such transactions
4	Payment to a Mutual Fund for purchase of its units	Amount exceeding fifty thousand rupees.
5	Payment to acompany or an institution for acquiring debentures or bonds issued by it.	Amount exceeding fifty thousand rupees.
6	Deposit with banking company or a co-operative bank or post office	Cash deposits exceeding fifty thousand rupees during any one day.
7	A time deposit with a banking company or a co- operative bank or post office.	Amount exceeding fifty thousand rupees or aggregating to more than five lakh rupees during a financial year.
8	Payment as life insurance premium	Amount aggregating to more than fifty thousand rupees in a financial year.
9	A contract for sale or purchase of securities (other than shares)	Amount exceeding one lakh rupees per transaction.

10	Sale o rpurchase, by any person, of shares of acompany not listed in a recognised stock exchange.	Amount exceeding one lakh rupees per transaction.
11	Sale or purchase of any immovable property.	Amount exceeding ten lakh rupees or valued by stamp valuation authority referred to in section 50C of the Act at an amount exceeding ten lakh rupees.

The NRI's cannot submit Form No.60 if their taxable income in India exceeds the threshold limit not chargeable to tax. Presently the limit is Rs.2,50,000/- for FY 2022-23. In other words, if the NRI has NRO interest income or other taxable income like rentals, capital gains, etc., exceeding Rs.2,50,000/- then they cannot submit Form No.60 for the above 11 transactions. They will have to submit their PAN details. If they do not have a PAN, then they will have to apply for PAN.

5. NRI's need not submit PAN or Form 60 for the below stated transaction:

Sl. No.	Particulars
1	Making an application to any banking company or a co-operative bank for issue of a credit or debit card.
2	Payment to a hotel or restaurant against a bill or bills at any one time.
3	Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time.
4	Payment to the Reserve Bank of India for acquiring bonds issued by it.
5	Purchase of bank drafts or pay orders or banker's cheques from a banking company o r a co-operative bank
6	Sale or purchase, by any person, of goods or services of any nature other than those covered elsewhere.

6. For making PAN application there are two types pf PAN application:

   (a) Form 49A – For Indian citizens

   (b) Form 49AA – For foreign citizens

7. If the PAN card is lost, you can ask for re-print of the PAN card for which there is a separate application. However, the formalities of re-print or applying for new PAN is the same.

NRIs and DTAA (Tax Treaty)

1. DTAA (Double Tax Avoidance Agreement) also known as "tax treaty" or "tax convention" seeks to eliminate or reduce the incidence of double taxation of the same income in two or more separate tax jurisdiction.
2. It is an agreement between two countries. The two countries negotiate with each other and arrive at an understanding as to which country has the right to tax a particular income and at what rate. During the negotiation, there could be instances wherein both the countries wants the taxing right and is not prepared to let go. In such a situation, they may agree to give credit for the taxes paid in the other country.
3. The definition of 'residential status' varies from country to country. Further, some countries may tax an individual based on citizenship. This leads to situation where an NRI is taxed on the same income (say) rental income in India (source based) and the same is taxed in US (Residence based). In such a situation, as per DTAA between India & USA, the NRI will get credit for taxes paid in India while computing his tax liability in USA wherein such rental income is again included in the tax return filed in USA.
4. It is reiterated that DTAA does not necessarily eliminate double taxation in all cases. DTAA can be a "limited" DTAA which covers limited nature of income and some DTAA are "comprehensive" in nature covering a wide range of income and situation.
5. For an NRI to access the tax treaty and avail the benefits under the same, he has to prove that he is a 'tax resident' of one of the country to the agreement. This is usually proved by submitting "Tax Residency Certificate" (TRC).
6. TRC is a simple certificate issued by the revenue/tax dept stating that the applicant is a 'resident' of that country for the purpose of taxation. Practical difficulties are faced by resident of those countries wherein there is no personal taxation. For example, UAE wherein the personal taxation is not yet introduced. However, in UAE, the ministry of finance issues the TRC.
7. In the scheme of taxation there are two tax rates as under:
   (i) Domestic tax laws;
   (ii) Tax Rates mentioned in DTAA.
   Sometimes the domestic tax rates are more favourable than the DTAA rates and therefore it makes sense not to be opt for DTAA in the country withholding the taxes.
   Example will the case of Interest on NRO deposit payable to a NRI resident in UAE. As per domestic tax law, the withholding tax rate is 31.20% whereas the tax rate under DTAA is 12.5%. In this case, the NRI must submit the TRC and other documents to the banker who will deduct tax @ 12.5% . In the instant case, the NRI does not get any tax credit in UAE for the taxes paid in India.
8. It is important to remember that under DTAA, when tax credit is given for taxes paid in the other country, such credit cannot give rise to a refund situation. For example, in the case of a resident in India and having an interest income in USA on which US tax was paid @ 20% (say), assuming that in India, his liability on interest is only (say) 15%. In this scenario, he cannot get refund of excess tax paid in USA (i.e 5%)
9. The mechanism of calculating the tax credit for foreign taxes paid need not be the same for all countries.

Form 15CA and Form 15CB

1. Whenever, a remittance/repatriation or overseas payment is sought by the account holder/investor, the banker by default will ask, among other things, for the Form 15CA and Form 15CB.

2. While remittance/repatriation or overseas payment is governed by FEMA regulation, the Form 15CA and Form 15CB is the requirement of the Income Tax Dept.

3. Form 15CB is a certification of the Chartered Accountant dealing with the tax liability, if any, with respect to the funds being sought to be remitted.

4. Form 15CA is an online remittance application detailing the nature of remittance, details of beneficiary, etc.

5. As per Rule 37BB of the Income Tax Rules, 1962, if the sum is not chargeable to tax and is covered under the below listed nature of remittance, the Form 15CA and Form 15CB is not required.

Sl. No.	Purpose code as per RBI	Nature of payment
1	S0001	Indian investment abroad - in equity capital (shares)
2	S0002	Indian investment abroad - in debt securities
3	S0003	Indian investment abroad - in branches and wholly owned subsidiaries
4	S0004	Indian investment abroad - in subsidiaries and associates
5	S0005	Indian investment abroad - in real estate
6	S0011	Loans extended to Non-Residents
7	S0101	Advance payment against imports
8	S0102	Payment towards imports - settlement of invoice
9	S0103	Imports by diplomatic missions
10	S0104	Intermediary trade
11	S0190	Imports below Rs.5,00,000 - (For use by ECD offices)
12	SO202	Payment for operating expenses of Indian shipping companies operating abroad
13	SO208	Operating expenses of Indian Airlines companies operating abroad
14	S0212	Booking of passages abroad - Airlines companies
15	S0301	Remittance towards business travel
16	S0302	Travel under basic travel quota (BTQ)
17	S0303	Travel for pilgrimage
18	S0304	Travel for medical treatment
19	S0305	Travel for education (including fees, hostel expenses etc.)
20	S0401	Postal services

Sl. No.	Purpose code as per RBI	Nature of payment
21	S0501	Construction of projects abroad by Indian companies including import of goods at project site
22	S0602	Freight insurance - relating to import and export of goods
23	S1011	Payments for maintenance of offices abroad
24	S1201	Maintenance of Indian embassies abroad
25	S1202	Remittances by foreign embassies in India
26	S1301	Remittance by non-residents towards family maintenance and savings
27	S1302	Remittance towards personal gifts and donations
28	S1303	Remittance towards donations to religious and charitable institutions abroad
29	S1304	Remittance towards grants and donations to other Governments and charitable institutions established by the Governments
30	S1305	Contributions or donations by the Government to international institutions
31	S1306	Remittance towards payment or refund of taxes
32	S1501	Refunds or rebates or reduction in invoice value on account of exports
33	S1503	Payments by residents for international bidding.

6. The process involved in the preparation of Form 15CA and Form 15CB is as under:

   (a) The remitter has to log into their on e-filing site (Income Tax Site) and ADD the CA who is to issue the Form 15CB. (Authorisation stage).

   (b) The remitter has to log into their on e-filing site (Income Tax Site) and ADD the CA who is to issue the Form 15CB. (Authorisation stage).

   (c) The Chartered Accountant will do an ONLINE Form 15CB using his digital signature.

   (d) The remitter will get the Form 15CB done online into his e-filing account.

   (e) Thereafter, the remitter has to fill up the ONLINE Form 15CA (Practically this is also done by the CA). The Form 15CA will be e-verified by the remitter.

   (f) The remitter will then print the Form 15CA and Form 15CB and submit it to the banker.

7. Form 15CA has 4 parts (A, B, C & D) and the remitter is expected to fill only one part. The various parts of Form 15CA and the relevant scenarios under which it is to used is tabulated as under:

PART TO BE FILLED	NATURE OF TRANSACTION	Whether Form 15CB is required ?
A	If the remittance is chargeable to tax and the remittance or the aggregate of such remittances, as the case may be, does not exceed five lakh rupees during the financial year.	No
B	If the remittance is chargeable to tax and the remittance or the aggregate of such remittances, as the case may be, exceeds five lakh rupees during the financial year and an order/certificate has been obtained from the Assessing Officer.	No
C	If the remittance is chargeable to tax and the remittance or the aggregate of such remittances, as the case may be, exceeds five lakh rupees during the financial year	Yes
D	If the remittance is not chargeable to tax	No

Returning Indian – Taxation

Under the Indian Tax laws, there is no separate concept called "Returning Indian". However, the timing of the return to India does make a tax difference for the year in which the NRI returns. When we use the term returning Indian, we are referring to a NRI who has been out of India for fairly long period.

Some specific tax issues for returning Indians are as under:

1. Immediately on return to India the NRO accounts must be re-designated as resident accounts. Accordingly, the TDS rate that was applied @ 31.2% on NRO accounts will stand reduced to 10%.

2. On returning to India, the FCNR accounts are permitted to be held till maturity. Thereafter it cannot be renewed. On maturity the FCNR accounts funds can be credited to RFC A/s. (Resident Foreign Currency A/c) or to resident domestic account. The interest earned on FCNR account is taxable only if the status of the person is "Ordinarily Resident". In other words, the interest is exempt as along as the status is NRI or RNOR. Even the interest earned on RFC account is exempt under RNOR status.

3. On returning to India, as per FEMA regulation, at the option of the account holder, the NRE accounts must immediately be converted into Resident account or RFC account.

4. Returning NRI can continue to hold their assets overseas (bank accounts, investments, immovable properties) without any restriction on time and value. However, the income earned on such overseas assets may become taxable in India when their status becomes 'Ordinarily Resident'.

PART - B
FEMA

INTRODUCTION

The Foreign Exchange Management Act, 1999 ['FEMA'] is a very important legislation for non- residents which permits, restricts & regulates their various investment/business transactions in India. Similarly, it permits, restricts & regulates the various overseas investment/business transactions of a person who is resident in India.

In the case of an individual being an NRI/OCI, the opening of bank accounts, operation of bank accounts, sale/purchase of equity shares, units of mutual funds, purchase of immovable properties, repatriation, borrowing & lending, etc are governed by FEMA.

The scope of this write-up/compilation is very much restricted to a resident or non-resident being an individual (natural person). It does not cover any aspects relating to HUF, partnership firms, LLPs and Companies.

This write-up seeks to give you a brief overview of the various regulations under FEMA. The technical compliances, reporting and filings under FEMA is outside the purview of this book.

This book is not a substitute to professional advice.

FEMA – Important definition

Q.1 Who is a "Person" under FEMA?

A.1 Person need not be "natural person" as understood by many. So, when we say person 'resident in India', the reference could be to an Individual (natural person), firm, company, etc.

Under FEMA person is defined as under:

person includes--

(i) **An individual,**

(ii) A Hindu undivided family,

(iii) A company,

(iv) A firm,

(v) An association of persons or a body of individuals, whether incorporated or not,

(vi) Every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) Any agency, office or branch owned or controlled by such person;

Q.2 Who is considered as a "person resident in India" under FEMA?

A.2 Person resident in India means-

(i) A person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include-

(A) A person who has gone out of India or who stays outside India, in either case-

(a) For or on taking up employment outside India, or

(b) For carrying on outside India a business or vocation outside India, or

(c) For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) A person who has come to or stays in India, in either case, otherwise than-

(a) For or on taking up employment in India, or

(b) For carrying on in India a business or vocation in India, or

(c) For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(ii) Any person or body corporate registered or incorporated in India,

(iii) An office, branch or agency in India owned or controlled by a person resident outside India,

(iv) An office, branch or agency outside India owned or controlled by a person resident in India;

(v) person resident outside India means a person who is not resident in India;

Q.3 When is an "Individual" considered to be 'resident in India'?

A.3 There has been a lot of confusion in understanding the definition of "person resident in India" as given in Q.2 above. The condition of residing in India for more than 182 days during the **preceding financial year** is not applicable in all the cases. The condition is not applicable to "individuals" who:

(a) left India for taking up employment outside India, or for carrying on outside India a business or vocation outside India, or for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.

(b) come to India for or on taking up employment in India, or for carrying on in India a business or vocation in India, or for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

Individuals covered under (a) above becomes non-resident the moment they leave India and the Individuals covered under (b) above becomes resident the moment they come to India. The condition of 182 days is not applicable to individuals covered under (a) & (b)

Q.4 Define NRI, PIO and OCI as per FEMA.

A.4 The terms are defined as under:

1. 'Non-resident Indian' (NRI) is a person resident outside India who is a citizen of India

2. 'Person of Indian Origin (PIO)' is a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

   a. Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act,1955 (57 of 1955); or

   b. Who belonged to a territory that became part of India after the 15th day of August, 1947; or

   c. Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or

   d. Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

Explanation: PIO will include an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.

3. "OCI" or "Overseas Citizen of India" means an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under section 7A of the Citizenship Act, 1955 (57 of 1955);

FEMA – Non-Residents – Bank Accounts in India - NRE

Q.1 What are the types of bank accounts that an NRI/PIO (including OCI card holder) can open in India?

A.1 NRI/PIO (including OCI card holder) can have three types of bank accounts as under:

(a) NRE Account (savings, current, recurring or fixed deposit account)

(b) NRO Account (savings, current, recurring or fixed deposit account)

(c) FCNR (B) Account (fixed deposit account)

Q.2 Can NRE accounts be held jointly with another NRI/PIO?

A.2 Yes, joint accounts can be held by two or more NRIs and/or PIOs

Q.3 Can NRE accounts be held jointly with residents?

A.3 Yes, joint accounts can be held by an NRI/PIO with a resident relative(s) on 'former or survivor' basis. However, during the life time of the NRI/PIO account holder, the resident relative can operate the account only as a Power of Attorney holder.

Q.4 Can NRE account be opened by a non-resident on a temporary visit to India?

A.4 An account may be opened in the name of an eligible NRI or PIO during his temporary visit to India against tender of foreign currency travellers cheques or foreign currency notes and coins tendered, provided the authorised dealer is satisfied that the person has not ceased to be a non-resident.

Q.5 What happens to the NRE accounts when the account holder returns to India permanently?

A.5 NRE accounts should be re-designated as resident accounts or the funds held in these accounts may be transferred to the RFC accounts (if the account holder is eligible for maintaining RFC account) at the option of the account holder immediately upon the return of the account holder to India for taking up employment or for carrying on business or vocation or for any other purpose indicating intention to stay in India for an uncertain period. Where the account holder is only on a short visit to India, the account may continue to be treated as NRE account even during his stay in India.

Q.6 Can a resident operate an NRE account as a power of attorney holder?

A.6 Authorised dealers/ authorised banks may allow operations on an NRE account in terms of Power of Attorney or other authority granted in favour of a resident by the non-resident account holder, provided such operations are restricted to withdrawals for local payments or remittance to the account holder himself through banking channels. In cases where the account holder or a bank designated by him is eligible to make investments in India, the Power of Attorney holder may be permitted by the authorised dealers/ banks to operate the account to facilitate such investment.

The resident Power of Attorney holder shall not be allowed to:

(a) Open NRE Account;

(b) Repatriate outside India funds held in the account under any circumstances other than to the account holder himself;

(c) To make payment by way of gift to a resident on behalf of the account holder to transfer funds from the account to another NRE account.

Q.7 Can an overdraft facility be provided to NRE Account?

A.7 Authorised dealers/ authorised banks may at their discretion/ commercial judgement allow for a period of not more than two weeks, overdrawing's in NRE savings bank accounts, up to a limit of Rs.50,000 subject to the condition that such overdrawing's together with the interest payable thereon are cleared/ repaid within the said period of two weeks, out of inward remittances through banking channels or by transfer of funds from other NRE/ FCNR(B) accounts.

Q.8 In the case of death of the NRE account holder, can the funds be remitted to the non-resident nominee?

A.8 Yes, authorised dealers/ authorised banks may allow remittance of funds lying in the NRE account of the deceased account holder to his non-resident nominee.

Q.9 Can the resident nominee remit the funds abroad to meet the overseas liabilities of the deceased account holder?

A.9 Application from a resident nominee for remittance of funds outside India for meeting the liabilities, if any, of the deceased account holder or for similar other purposes, should be forwarded to the Reserve Bank for consideration.

Q.10 What are the permitted credits to NRE Account?

A.10 Permitted Credits:

(a) Proceeds of remittances to India in any permitted currency;

(b) Proceeds of personal cheques drawn by the account holder on his foreign currency account and of travellers cheques, bank drafts payable in any permitted currency including instruments expressed in Indian rupees;

(c) Proceeds of foreign currency/ bank notes tendered by account holder during his temporary visit to India;

(d) Transfers from other NRE/ FCNR (B) accounts;

(e) Interest accruing on the funds held in the account;

(f) Current income in India due to the account holder, subject to payment of applicable taxes in India

(g) Maturity or sale proceeds of any permissible investment in India which was originally made by debit to the account holder's NRE/ FCNR (B) account or out of remittances received from outside India through banking channels;

(h) Refund of share/ debenture subscriptions to new issues of Indian companies or

portion thereof, if the amount of subscription was paid from the same account or from other NRE/ FCNR (B) account of the account holder or by remittance from outside India through banking channels;

(i) Refund of application/ earnest money/ purchase consideration made by the house building agencies/ seller on account of non-allotment of flat/ plot/ cancellation of bookings / deals for purchase of residential/ commercial property, together with interest, if any (net of income tax payable thereon), provided the original payment was made out of NRE/ FCNR(B) account of the account holder or remittance from outside India through banking channels and the authorised dealer is satisfied about the genuineness of the transaction;

(j) Transfer from NRO account of NRI/PIO within the overall ceiling of USD one million per financial year subject to payment of tax, as applicable;

(k) Any other credit if covered under general or special permission granted by Reserve Bank.

Q.11 What are the permitted debits to NRE account?

A.11 Permitted debits:

(a) Local disbursements;

(b) Remittances outside India;

(c) Transfer to NRE/ FCNR (B) accounts of the account holder or any other person eligible to maintain such account;

(d) Investment in shares/ securities/ commercial paper of an Indian company or for purchase of immovable property in India provided such investment/ purchase is covered by the regulations made, or the general/ special permission granted by the Reserve Bank;

(e) Any other transaction if covered under general or special permission granted by the Reserve Bank.

Q.12 Can loans be granted against the security of funds lying in NRE account?

A.12 Yes, loans can be granted by the authorised dealers and authorised banks against the security of funds lying in NRE account subject to terms and conditions to the account holder/third party in India

FEMA – Non-Residents – Bank Accounts in India – NRO

Q.1 Who can open NRO account?

A.1 Any person resident outside India (not restricted to NRI/OCI) may open NRO account with an authorised dealer or an authorised bank for the purpose of putting through bonafide transactions in rupees not involving any violation of the provisions of the Act, rules and regulations made thereunder.

Q.2 Can a tourist open a NRO account?

A.2 Yes, NRO (current/ savings) account can be opened by a foreign national of non-Indian origin visiting India, with funds remitted from outside India through banking channel or by sale of foreign exchange brought by him to India. The balance in the NRO account may be paid to the account holder at the time of his departure from India provided the account has been maintained for a period not exceeding six months and the account has not been credited with any local funds, other than interest accrued thereon

Q.3 What are the restrictions on opening of NRO accounts for individuals from certain countries?

A.3 Opening of accounts by individuals/ entities of Pakistan nationality/ ownership and entities of

Bangladesh ownership requires prior approval of the Reserve Bank. However, individuals of Bangladesh nationality may be allowed to open these accounts subject to the individual/s holding a valid visa and valid residential permit issued by Foreigner Registration Office (FRO)/Foreigner Regional Registration Office (FRRO) concerned.

Authorized Dealers may open only one Non-Resident Ordinary (NRO) Account for a citizen of Bangladesh or Pakistan, belonging to minority communities in those countries, namely Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, residing in India and who has been granted a Long Term Visa (LTV) by the Central Government. The account will be converted to a resident account once such a person becomes a citizen of India. This account can also be opened if such person has applied for LTV which is under consideration of the Central Government, in which case the account will be opened for a period of six months and may be renewed at six monthly intervals subject to the condition that the individual holds a valid visa and valid residential permit issued by Foreigner Registration Office (FRO)/ Foreigner Regional Registration Office (FRRO) concerned

Q.4 What are the permissible credits to NRO Accounts?

A.4 Permissible credits

(a) Proceeds of remittances received in any permitted currency from outside India through banking channels or any permitted currency tendered by the account-holder during his temporary visit to India or transfers from rupee accounts of non-resident banks

(b) Legitimate dues in India of the account holder

(c) Transfers from other NRO account

(d) Gifts received from resident relatives under LRS scheme

(e) Loans received from resident relative up to USD 2,50,000 under the Liberalised remittance Scheme.

(f) Any amount received by the account holder in accordance with the rules or regulations made under the Act

Q.5 What are the permissible debits to NRO Accounts?

A.5 Permissible debits:

(a) All local payments in rupees including payments for investments subject to compliance with the relevant regulations made by the Reserve Bank.

(b) Remittance outside India of current income in India of the account holder net of applicable taxes

(c) Transfers to other NRO accounts

(d) Settlement of charges on International Credit Cards issued by authorised dealer banks in India to NRIs or PIOs, subject to the limits for repatriation of balances held in NRO account

(e) Transfer to NRE account or repatriation under the USD 1 million remittance scheme (only for NRIs/PIOs).

Q.6 Can NRO accounts be held jointly with another NRI/OCI?

A.6 NRIs and/or OCI may hold NRO account jointly with other NRIs and/or OCI

Q.7 Can NRO accounts be held jointly with residents?

A.7 Yes, the accounts may be held jointly with residents on 'former or survivor' basis.

Q.8 What happens to the NRO accounts when the account holder returns to India permanently?

A.8 NRO accounts may be designated as resident accounts on the return of the account holder to India for any purpose indicating his intention to stay in India for an uncertain period.

Likewise, when a resident Indian becomes a person resident outside India, his existing resident account should be designated as NRO account.

Q.9 Can a resident operate an NRO account as a power of attorney holder?

A.9 Yes, banks allow operations on an NRO account in terms of a Power of Attorney, provided such operations are restricted to:

(i) all local payments in rupees including payments for eligible investments subject to compliance with relevant regulations made by the Reserve Bank; and

(ii) remittance outside India of current income in India of the non-resident individual account holder, net of applicable taxes.

The resident Power of Attorney holder shall not repatriate outside India funds held in the account under any circumstances other than to the non-resident individual account holder himself nor shall make payment by way of gift to a resident on behalf of the non-resident account holder nor transfer funds from the account to another NRO account.

Q.10 What happens to the NRO account on change of status of the account holder from non- resident to resident?

A.10 NRO accounts may be designated as resident rupee accounts on the return of the account holder to India for taking up employment, or for carrying on business or vocation or for any other purpose indicating his intention to stay in India for an uncertain period. Where the account holder is only on a temporary visit to India, the account should continue to be treated as non-resident during such visit.

Q.11 What happens to the bank account on change of status of the account holder from resident to non-resident?

A.11 When a person resident in India leaves India for a country (other than Nepal or Bhutan) for taking up employment, or for carrying on business or vocation outside India or for any other purpose indicating his intention to stay outside India for an uncertain period, his existing account should be designated as a Non-Resident (Ordinary) account.

Q.12 Can loans/overdrafts be granted against the security of funds lying in NRO account?

A.12 Loans/overdrafts can be granted against the security of funds lying in NRO account to:

(a) The account holder - for personal purposes or for carrying on business activities except for the purpose of relending or carrying on agricultural/ plantation activity or for investment in real estate business.

(b) Resident third parties - for meeting borrower's personal requirements and/ or business purpose and not for carrying on agricultural/ plantation activities or real estate business, or for relending.

Q.13 Can foreign nationals convert their resident accounts in to NRO account on leaving the country?

A.13 To facilitate the foreign nationals to collect their pending dues in India banks may permit such foreign nationals to re-designate their residents account as NRO account on leaving the country after their employment to enable them to receive their pending bonafide due in India.

FEMA – Non-Residents – Bank Accounts in India – FCNR (B)

Q.1 What is a FCNR(B) Account?

A.1 It is a deposit account opened in designated foreign currency. FCNR (B) stands for 'Foreign Currency (Non-Resident) account. Presently, the designated currencies are US dollar (USD), Pound sterling (GBP), Japanese Yen (JPY), Euro (EURO), Australian Dollar (AUD) & Canadian Dollar (CAD).

Q.2 Who are eligible to open FCNR(B) Account?

A.2 NRIs and PIOs are eligible to open and maintain these accounts with an authorised dealer

Q.3 With what kind of funds can the FCNR(B) account be opened?

A.3 These accounts may be opened with funds remitted from outside India through banking channels or by debit to NRE account.

Q.4 What happens on change of residential status of the account holder?

A.4 When an account holder becomes a person resident in India, **deposits may be allowed to continue till maturity at the contracted rate of interest,** if so desired by him. However, except the provisions relating to rate of interest and reserve requirements as applicable to FCNR (B) deposits, for all other purposes such deposits shall be treated as resident deposits from the date of return of the accountholder to India. Authorised dealers should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the accountholder and interest on the new deposit (rupee account or RFC account) shall be payable at the relevant rates applicable for such deposits.

Note: Terms and conditions as applicable to NRE accounts in respect of joint accounts, repatriation of funds, opening account during temporary visit, operation by power of attorney, loans/ overdrafts against security of funds held in accounts, shall apply mutatis mutandis to FCNR (B) accounts

FEMA – Non-Residents – Deposits in India (Other than bank deposits)

Q.1 Can a Company incorporated in India accepts deposits from NRI/OCI on repatriation basis?

A.1 No, a Company incorporated in India cannot accept deposits from NRI/OCI on repatriation basis.

However, accepting deposits by an Indian company from persons resident outside India (not restricted to NRI/OCI) in accordance with section 160 of the Companies Act, 2013, is a current account (payment) transaction and, as such, does not require any approval from Reserve Bank. Such deposit can also be refunded in the event of selection of the person as director or getting more than twenty five percent votes.

Q.2 Who can accept deposits (Other than bank deposits) from NRI/OCI?

A.2 An Indian proprietorship concern/firm or a company (Including NBFC registered with RBI) can accept deposits from NRI/OCI on non-repatriation basis.

The proprietorship concern, firm or company accepting the deposit shall not utilise the amount of deposits for relending (not applicable to a Non-Banking Finance Company) or for undertaking agricultural/ plantation activities or real estate business or for investing in any other concern or firm or company engaged in or proposing to engage in agricultural/ plantation activities or real estate business.

FEMA – Non-Residents – Borrowing & Lending

Q.1 What are the borrowing facilities available to NRIs in India?

A.1 The NRIs can borrow in India from the below mentioned sources:

(a) NRI/OCI Cardholder may borrow within the overall limit under the Liberalised Remittance Scheme from an individual resident in India (Close relative). Presently the limit is USD 2,50,000.

(b) Branches outside India of AD banks may extend foreign exchange loans against the security of funds held in NRE/ FCNR deposit accounts or any other account as specified by the Reserve Bank from time to time.

(c) An AD in India may grant loan to a NRI/OCI Cardholder for meeting the borrower's personal requirements/own business purposes/acquisition of a residential accommodation in India/ acquisition of motor vehicle in India / or for any purpose as per the loan policy laid down by the Board of Directors of the AD and in compliance with prudential guidelines of Reserve Bank of India. The AD bank should ensure that the borrowed funds are not used for restricted end uses.

(d) A registered non-banking financial company in India or a registered housing finance institution in India or any other financial institution as may be specified by the Reserve Bank from time to time, may provide housing loan or vehicle loan, as the case may be, to a NRI/OCI Cardholder subject to such terms and conditions as prescribed by the Reserve Bank from time to time. The borrower should ensure that the borrowed funds are not used for restricted end uses

(e) An Indian entity may grant loan in Indian Rupees to its employee who is a NRI/OCI Cardholder in accordance with the Staff Welfare Scheme subject to such terms and conditions as prescribed by the Reserve Bank from time to time. The borrower should ensure that the borrowed funds are not used for restricted end uses.

(f) Authorised dealers/ authorised banks may at their discretion/ commercial judgement allow for a period of not more than two weeks, overdrawings in NRE savings bank accounts, up to a limit of Rs.50,000 subject to the condition that such overdrawings together with the interest payable thereon are cleared/ repaid within the said period of two weeks, out of inward remittances through banking channels or by transfer of funds from other NRE/ FCNR(B) accounts

Q.2 Can NRI's/OCI lend to an individual resident in India?

A.2 AN NRI/OCI (being a close relative) may lend to an individual resident in India as under:

(a) Lend foreign exchange loan of a sum not exceeding USD 250,000

(b) Lend rupee loans against the security of their funds lying in NRE/NRO/FCNR accounts in India.

FEMA – Non-Residents - Immovable property in India

Q.1 What are the various modes of acquisition of immovable property by an NRI or OCI?

A.1 NRI's or OCI (Including OCI card holders) can acquire immovable property in India through:

(a) Purchase (other than agricultural land/ plantation property/farm house);

(b) Gift (other than agricultural land/ plantation property/farm house) from person resident in India or from an NRI or an OCI who is a relative as defined in section 2(77) of the Companies Act, 2013.

(c) Inheritance (including agricultural land/ plantation property/farm house) from a person resident outside India who had acquired the property in accordance with the provisions of the foreign exchange law in force at the time of acquisition.

(d) Inheritance (including agricultural land/ plantation property/farm house) from a person resident in India.

Q.2 What are the various modes of transfer of immovable property by an NRI or OCI?

A.2 'Transfer' includes sale, purchase, mortgage, exchange, pledge, gift, loan or any other form of transfer of right, title, possession or lien and accordingly an NRI or an OCI (Including OCI card holders) may:

(a) transfer any immovable property (including agricultural land/ plantation property/farm house) in India to a person resident in India;

(b) transfer any immovable property (other than agricultural land or plantation property or farmhouse) to an NRI or an OCI. In case the transfer is by way of gift, the transferee should be a relative as defined in section 2(77) of the Companies Act, 2013.

Q.3 Can a non-resident not being NRI or an OCI acquire immovable property?

A.3 A person resident outside India, not being a Non-Resident Indian or an Overseas Citizen of India, who is a spouse of a Non-Resident Indian or an Overseas Citizen of India may acquire one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse provided that the marriage have been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property.

Q.4 Can Long-Term Visa (LTV) holder acquire immovable property in India?

A.4. A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries viz., Hindus, Sikhs, Jains, Buddhists, Parsis and Christians, who is residing in India and has been granted a Long-Term Visa (LTV) by the Central Government may purchase only one residential immovable property in India as dwelling unit for self- occupation and only one immovable property for self-employment. The acquisition is subject to certain terms & conditions.

Sale of the immovable property so acquired is permissible only after such person has acquired Indian citizenship. However, transfer of such immovable property before acquiring Indian citizenship requires the prior approval of the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional

Registration Office (FRRO) concerned.

Q.5. Citizens of which countries are prohibited from acquisition or transfer of immovable property in India?

A.5 Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong and Democratic People's Republic of Korea cannot, without prior permission of the Reserve Bank, acquire or transfer immovable property in India, other than on lease, not exceeding five years. For this purpose, the term "citizen" shall include natural persons and legal entities. The prohibition above shall not apply to an OCI.

Q.6 Can the sale proceeds of the immovable property in India be repatriated?

A.6 Though the FEMA regulations permits repatriation subject to terms & conditions, the same gets diluted through the remittance facility of USD one million per financial year (available to NRI/OCI). In other words, non-repatriable assets (being assets acquired from rupee/local sources) when he was a 'resident' and also agriculture property, inherited/gifted/acquired when he was a resident, can be repatriated within the USD 1 Million facility.

FEMA – Non-Residents – Investments in India

Q.1 What are the investment avenues available to an NRI/OCI in India?

A.1. NRI/OCI's can invest in India on repatriable & non-repatriable basis. Some of the avenues for investments are:

On repatriation basis:

(a) Purchase or sell equity instruments of a listed Indian company on a recognised stock exchange in India.

(b) Purchase or sell units of domestic mutual funds which invest more than 50% in equity.

(c) Government dated securities (other than bearer securities) or treasury bills or units

of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50 percent in equity;

(d) Bonds issued by a Public Sector Undertaking (PSU) in India; (e) Bonds issued by Infrastructure Debt Funds;

(e) Listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 6 of Foreign Exchange Management (Debt Instruments) Regulations, 2019

(f) Debt instruments issued by banks, eligible for inclusion in regulatory capital.

(g) Subscription to National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such person is eligible to invest as per the provisions of the PFRDA Act. The annuity/ accumulated saving will be repatriable.

(h) NRIs or OCIs may invest in the Indian Depository Receipts (IDRs) out of funds held in their NRE/ FCNR(B) account

On non-repatriation basis:

A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI is permitted to purchase/ contribute to the following on a non-repatriation basis:

(i) Any capital instrument (equity shares, debentures, preference shares and share warrants) issued by a company without any limit either on the stock exchange or outside it.

(ii) Purchase or sell units of domestic mutual funds which invest more than 50% in equity

(iii) An NRI or an OCI may, without limit, purchase on non-repatriation basis, dated Government securities (other than bearer securities), treasury bills, units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50 percent in equity, or National Plan/ Savings Certificates.

(iv) An NRI or an OCI may, without limit, purchase on non-repatriation basis, listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 6 of these Regulations.

(v) An NRI or an OCI may, without limit, on non-repatriation basis subscribe to the chit funds authorised by the Registrar of Chits or an officer authorised by the State Government in this behalf.

(vi) Units issued by an investment vehicle without any limit, either on the stock exchange or outside it.

(vii) The capital of a Limited Liability Partnership without any limit. The sale/ maturity proceeds (net of applicable taxes) of equity instruments purchased or disinvestment proceeds of an LLP should be credited only to the NRO account of the investor, irrespective of the type of account from which the consideration was paid. The amount invested in equity instruments of an Indian company or the consideration for contribution to the capital of an LLP and the capital appreciation thereon cannot be repatriated abroad.

(viii) Convertible notes issued by a startup company in accordance with NDI Rules.

(ix) An NRI or an OCI is permitted to invest, on a non-repatriation basis, by way of contribution to the capital of a firm or a proprietary concern in India.

The investee firm or proprietary concern should not be engaged in any agricultural/ plantation activity or print media or real estate business i.e., dealing in land and immovable property with a view to earning profit or earning income therefrom. The amount invested for contribution to the capital of a firm or a proprietary concern and the capital appreciation thereon cannot be repatriated abroad.

Note:

An NRI or an OCI cannot invest in equity instruments or units of a Nidhi company or a company engaged in agricultural/ plantation activities or real estate business or construction of farm houses or dealing in Transfer of Development Rights.

Q.2 What is the PIS facility available to NRI's/OCI's to purchase/sell equity shares on recognised stock exchange in India?

A.2 A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) is allowed to purchase or sell equity instruments of a listed Indian company on repatriation basis, on a recognised stock exchange in India, subject to the following conditions:

(a) The purchase and sale is done through a designated authorised dealer branch;

(b) The total holding by any individual NRI or OCI should not exceed five percent of the total paid-up equity capital on a fully diluted basis or should not exceed five percent of the paid-up value of each series of debentures or preference shares or warrants issued by an Indian company and the total holdings of all NRIs and OCIs put together should not exceed ten percent of the total paid-up equity capital on a fully diluted basis or should not exceed ten percent of the paid-up value of each series of debentures or preference shares or warrants;

(c) the aggregate ceiling of ten per cent can be raised to twenty-four per cent if a special resolution to that effect is passed by the General Body of the Indian company;

(d) The amount of consideration for purchase of equity instruments should be received as an inward remittance from abroad through banking channels or out of funds held in a Non-Resident External (NRE) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

(e) The NRE account will be designated as an NRE (PIS) Account and the designated account should be used exclusively for putting through transactions permitted under this scheme.

(f) The sale proceeds (net of taxes) of the equity instruments can be remitted outside India or may be credited to NRE (PIS) Account of the person concerned.

Q.3 In the case of sale of the above-mentioned investments of NRI/OCI, the sale proceed will be credited to which type of bank account?

A.3 If the investments were made on repatriable basis, the sale proceeds may be credited to NRE account. In all other case, the sale proceeds will be credited to NRO account. The sale proceeds in both cases will be credited net of taxes.

FEMA – Non-Residents – Remittances

Q.1 What is meant by remittance of asset?

A.1 Remittance of asset' means remittance outside India of funds:

(a) In a deposit with a bank/ firm/ company,

(b) In a provident fund balance or superannuation benefits,

(c) Amount of claim or maturity proceeds of Insurance policy,

(d) Sale proceeds of shares, securities, immovable property; or

(e) Any other asset held in India in accordance with the provisions of the Act or rules/ regulations made under the Act

Q.2 What is the remittance regulation for an individual being a foreign national (other than NRI/OCI)?

A.2 ADs may allow remittance of assets by a foreign national where:

(a) The person has retired from employment in India;

(b) The person has inherited from a person referred to in section 6(5) of the Act; (c) the person is a non-resident widow/widower and has inherited assets from her/his deceased spouse who was an Indian national resident in India.

The remittance should not exceed USD one million per financial year. This limit, however, will not cover sale proceeds of assets held on repatriation basis. In case the remittance is made in more than one instalment, the remittance of all instalments should be made through the same AD on submission of documentary evidence.

Q.3 What is the remittance regulation for an individual being NRI/OCI?

A.3 ADs may allow NRIs/ PIOs, on submission of documentary evidence, to remit up to USD one million, per financial year:

(a) Out of balances in their non-resident (ordinary) (NRO) accounts/ sale proceeds of assets/ assets acquired in India by way of inheritance/ legacy;

(b) In respect of assets acquired under a deed of settlement made by either of his/ her parents or a relative as defined in Companies Act, 2013. The settlement should take effect on the death of the settler.

(c) In case settlement is done without retaining any life interest in the property i.e. during the lifetime of the owner/ parent, it would tantamount to regular transfer by way of gift and the remittance of sale proceeds of such property would be guided by the extant instructions on remittance of balance in the NRO account.

Q.4. Which remittances require the approval of RBI?

A.4 Prior approval of the Reserve Bank is necessary for remittance of assets where:

(a) Remittance is in excess of USD 1,000,000 (US Dollar One million only) per financial year:

(i) On account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India;

(ii) By NRIs/ PIOs out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy.

(b) Hardship will be caused to a person if remittance from India is not made to such a person.

(c) Remittance of funds from the sale of assets in India held by a person, whether resident in or outside India, not covered under the directions stipulated above will require approval of the Reserve Bank.

FEMA – Resident – Foreign currency bank account

Q.1 Can an Individual resident in India hold Foreign Currency Bank accounts?

A.1 An individual resident in India may hold Foreign Currency Bank accounts:

(a) In India;

(b) Outside India

Q.2 What are the types of Foreign Currency Bank accounts that can be held in India by an individual resident in India?

A.2 An individual, resident in India can hold two types of account as under:

1. Resident Foreign Currency (RFC) Account – RFC Account

Such accounts can be opened with an AD bank in India out of foreign exchange received or acquired by him:

(a) As pension or superannuation benefits or other monetary benefits from his overseas employer.

(b) By converting assets which were acquired by him when he was a non-resident or inherited from or gifted by a person resident outside India and repatriated to India.

(c) Before July 8, 1947 or any income arising or accruing thereon which is held outside India in pursuance of a general or special permission granted by the Reserve Bank.

(d) Received as proceeds of LIC claims/ maturity/ surrendered value settled in forex from an Indian insurance company permitted to undertake life insurance business by the Insurance Regulatory and Development Authority.

The balances in the RFC account are free from all restrictions regarding utilisation of foreign currency balances outside India.

Such accounts can be held jointly with resident relative as joint holder on 'former or survivor' basis. However, such resident Indian relative joint account holder cannot operate the account during the life time of the resident account holder.

The balances in the Non-Resident External (NRE) Account and Foreign Currency Bank [FCNR (B)] Account can be credited to the RFC account when the residential status of the non-resident Indian (NRI) or person of Indian origin (PIO) changes to that of a Resident

2. Resident Foreign Currency (Domestic) Account – RFC (D) Account

A resident individual may open an RFC(D) account to retain in a bank account in India the foreign exchange acquired in the form of currency notes, bank notes and travellers cheques from overseas sources such as:

(a) Payment while on a visit abroad for services not arising from any business or anything done in India.

(b) Honorarium or gift or for services rendered or in settlement of any lawful

obligation from any person not resident in India and who is on a visit to India.

(c) Honorarium or gift while on a visit to any place outside India. (d) gift from a relative.

(d) Unspent foreign exchange acquired from an authorised person for travel abroad.

(e) Representing the disinvestment proceeds received by the resident account holder on conversion of shares held by him to ADRs/ GDRs under the DR Scheme, 2014.

(f) By way of earnings received as the proceeds of life insurance policy claims/ maturity/surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority.

This facility is in addition to that provided under RBI Notification No.FEMA.11(R)/ 2015- RB dated December 29, 2015, as amended from time to time relating to physical possession of foreign currency notes not exceeding USD 2000 and coins which can be held without any limits.

The account shall be maintained in the form of Current Account and shall not bear any interest. There shall be no ceiling on the balances in the account.

Q.3 List out the various scenarios under which an individual resident in India hold foreign currency accounts outside India?

A.3 The various scenarios under which an individual resident in India hold foreign currency accounts outside India are as under:

(a) A person resident in India who has gone abroad for studies may open a foreign currency account with a bank outside India during his stay abroad. All credits to the account from India should be made in accordance with FEMA and the rules and regulations made thereunder. 15On the student's return to India after completion of studies, the account will be deemed to have been opened under the Liberalised Remittance Scheme.

(b) A person resident in India who is on a visit to a foreign country may open a foreign currency account with a bank outside India during his stay abroad. The balance in the account should be repatriated to India on return of the account holder to India.

(c) A person going abroad to participate in an exhibition/ trade fair may open a foreign currency account with a bank outside India for crediting the sale proceeds of goods. The balance should be repatriated to India within one month from the date of closure of the exhibition/ trade fair.

(d) A foreign citizen resident in India, being an employee of a foreign company, on deputation to the office/ branch/ subsidiary/ joint venture/ group company in India can open a foreign currency account outside India for remitting/ receiving their entire salary payable to him in India.

(e) An Indian citizen, being an employee of a foreign company, on deputation to the office/branch/ subsidiary/ joint venture/ group company in India can open a

foreign currency account outside India for remitting/ receiving their entire salary payable to him in India.

(f) A foreign citizen resident in India employed with an Indian company can open a foreign currency account outside India for remitting/ receiving their entire salary payable to him in India.

(g) A resident individual can open a foreign currency account with a bank outside India for the purpose of sending remittances under the Liberalized Remittance Scheme

(h) A person resident in India may maintain a foreign currency account outside India if he had maintained it when he was resident outside India.

(i) A person resident in India may maintain a foreign currency account outside India if he has inherited it from a person outside India.

Q.4 Can foreign currency accounts be held jointly or singly?

A.4 The account can be held singly or jointly in the name of person eligible to open, hold and maintain such account.

Q.5 What happens to the foreign currency accounts on the death of the account holder?

A.5 On the death of a foreign currency account holder:

(a) The authorised dealer with whom the account is held or maintained may remit to a nominee being a person resident outside India, funds to the extent of his share or entitlement from the account of the deceased account holder.

(b A nominee being a person resident in India, who is desirous of remitting funds outside India out of his share for meeting the liabilities abroad of the deceased, may apply to the Reserve Bank for such remittance.

(c) Resident nominee of an account held outside India has to close the account and bring back the proceeds to India through banking channels.

Q.5 Can resident individual hold resident bank accounts jointly with NRIs?

A.5 Yes, NRI (close relative) can be joint account holder in all types of resident bank account maintained by residents in India on "Either or Survivor" basis subject to the following terms:

(a) Such accounts will be treated as resident bank account for all purposes.

(b) Cheques, instruments, remittances, cash, card or any other proceeds belonging to the NRI close relative shall not be eligible for credit to this account.

(c) Cheques, instruments, remittances, cash, card or any other proceeds belonging to the NRI close relative shall not be eligible for credit to this account.

(d) The NRI close relative shall operate such account only for and on behalf of the resident for domestic payment and not for creating any beneficial interest for himself.

(e) Where the NRI close relative becomes a joint holder with more than one resident in such account, such NRI close relative should be the close relative of all the resident bank account holders.

(f) Where due to any eventuality, the non-resident account holder becomes the survivor of such an account, it shall be categorized as Non-Resident Ordinary Rupee (NRO) account as per the extant regulations.

(g) Onus will be on the non-resident account holder to keep AD bank informed to get the account categorized as NRO account and all such regulations as applicable to NRO account shall be applicable.

(h) The above joint account holder facility may be extended to all types of resident accounts including savings bank account

FEMA – Residents – Borrowing & Lending

Q.1 Can a resident individual borrow/take loan from a person resident outside India?

A.1 An individual resident in India may borrow/take:

(a) Foreign exchange loan; and/or

(b) Rupee loan

Foreign exchange loan:

An individual resident in India may borrow a sum not exceeding USD 250,000/- or its equivalent from his/her relatives outside India.

An individual resident in India studying abroad may raise loan outside India not exceeding USD 250,000/- or its equivalent, for the purposes of payment of education fees abroad and maintenance.

Rupee loan:

A resident individual may borrow in Indian Rupees from a NRI/Relatives who are OCI Cardholders outside India. The borrower should ensure that the borrowed funds are not used for restricted end uses.

Q.2 Can a resident individual grant loan to a person resident outside India?

A.2 A resident individual may grant Rupee loan to a NRI/OCI (Close relative) within the overall limit under the Liberalised Remittance Scheme subject to:

(a) The loan is free of interest and the minimum maturity of the loan is one year

(b) The loan amount should be within the overall limit under the Liberalised Remittance Scheme of USD 2,50,000 per financial year available for a resident individual. It would be the responsibility of the resident individual to ensure that the amount of loan granted by him is within the LRS limit and all the remittances made by the resident individual during a given financial year.

(c) The loan shall be utilized for meeting the borrower's personal requirements or for his own business purposes in India

(d) The loan shall not be utilized for business of chit fund, Nidhi Company, agricultural or plantation activities, real estate business, construction of farm houses, trading in Transferable Development Rights (TDRs)

(e) The loan amount should be credited to the NRO a/c of the NRI / PIO. Credit of such loan amount may be treated as an eligible credit to NRO a/c

(f) The loan amount shall not be remitted outside India

(g) Repayment of loan shall be made by way of inward remittances through normal banking channels or by debit to the Non-resident Ordinary (NRO) / Non-resident External (NRE) / Foreign Currency Non-resident (FCNR) account

FEMA – Residents - Immovable property abroad

Q.1 What are the various modes through which a person resident in India acquires immovable property outside India?

A.1 A person resident in India may acquire immovable property outside India:

(a) From a 'Resident'; or

(b) From a 'Non-Resident'

From a 'Resident'

A person resident in India may acquire immovable property outside India by way of inheritance or gift or purchase from a person resident in India who has acquired such property as per the foreign exchange provisions in force at the time of such acquisition.

From a 'Non-Resident'

A person resident in India may acquire immovable property outside India from a person resident outside India:

(a) By way of inheritance

(b) By way of purchase out of foreign exchange held in RFC account

(c) By way of purchase out of the remittances sent under the Liberalised Remittance Scheme

(d) Jointly with a relative who is a person resident outside India

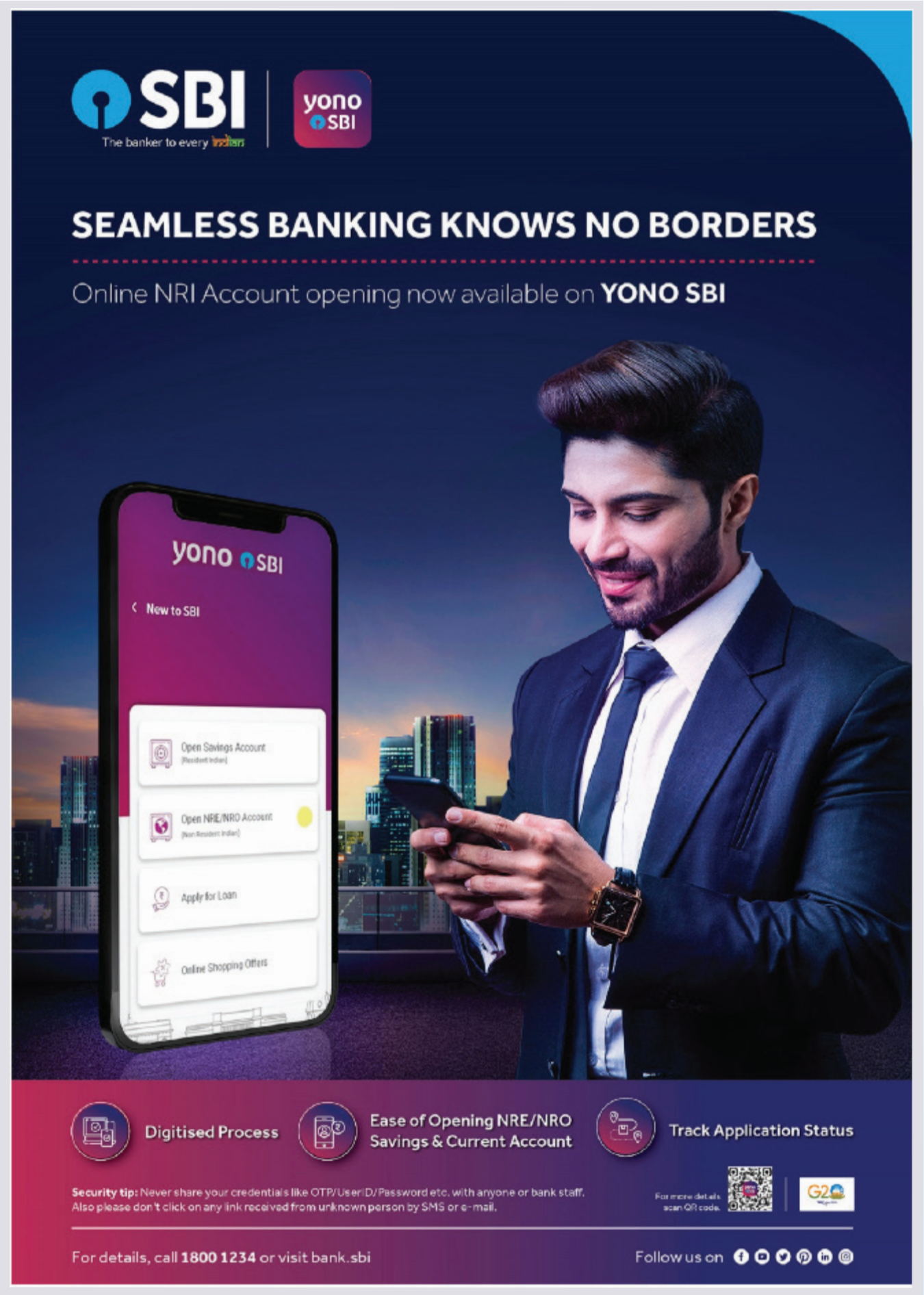
(e) Out of the income or sale proceeds of the assets, other than ODI, acquired overseas under the provisions of the Act

Q.2 Can the immovable property acquired as per the provisions of the Act be sold or gifted?

A.2 A person resident in India who has acquired any immovable property outside India in accordance with the foreign exchange provisions in force at the time of such acquisition may:

(a) Transfer such property by way of gift to a person resident in India who is eligible to acquire such property under these rules or by way of sale.

(b) Create a charge on such property in accordance with the Act or the rules or regulations made thereunder or directions issued by the Reserve Bank from time to time.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FEMA – Resident- Overseas Investments

Q.1 What are the various avenues of making overseas investment by a resident individuals?

A.1 A resident individual may make or hold Overseas Investment by way of:

1. Overseas Direct Investment (ODI) in an operating foreign entity not engaged in financial services activity and which does not have subsidiary or step-down subsidiary where the resident individual has control in the foreign entity.
2. Overseas Portfolio Investment (OPI) including by way of reinvestment;
3. ODI or OPI, as the case may be, by way of:
   (i) Capitalisation, within the time period, if any, specified for realisation under the Act, of any amount due from the foreign entity the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank.
   (ii) Swap of securities on account of a merger, demerger, amalgamation or liquidation.
   (iii) Acquisition of equity capital through rights issue or allotment of bonus shares.
   (iv) Gift.
   (v) Inheritance.
   (vi) Acquisition of sweat equity shares.
   (vii) Acquisition of minimum qualification shares issued for holding a management post in a foreign entity.
   (viii) Acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme.
4. A resident individual may make ODI in a foreign entity, including an entity engaged in financial services activity, (except in banking and insurance), in IFSC if such entity does not have subsidiary or step-down subsidiary outside IFSC where the resident individual has control in the foreign entity.

Q.2 What are the conditions for acquisition of foreign securities by way of gift or inheritance?

A.2 A resident individual may, without any limit, acquire foreign securities by way of inheritance from a person resident in India who is holding such securities in accordance with the provisions of the Act or from a person resident outside India.

A resident individual, without any limit, may acquire foreign securities by way of gift from a person resident in India who is a relative and holding such securities in accordance with the provisions of the Act.

A resident individual may acquire foreign securities by way of gift from a person resident outside India in accordance with the provisions of the Foreign Contribution

(Regulation) Act, 2010 (42 of 2010) and the rules and regulations made thereunder.

Q.3 Can the resident individual transfer by way of gift the overseas investments to a person resident outside India?

A.3 Resident individuals are not permitted to transfer any overseas investment by way of gift to a person resident outside India

Q.4 What are the terms and conditions governing acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme or sweat equity shares.?

A.4 Employee Benefit Scheme" means any compensation or incentive given to the directors or employees of any entity which gives such directors or employees ownership interest in an overseas entity through ESOP or any similar scheme.

A resident individual, who is an employee or a director of an office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or of an Indian entity in which the overseas entity has direct or indirect equity holding, may acquire, without limit, shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme or sweat equity shares offered by such overseas entity, provided that the issue of Employee Stock Ownership Plan or Employee Benefits Scheme are offered by the issuing overseas entity globally on a uniform basis.

FEMA – Residents - Liberalised Remittance Scheme (LRS)

Q.1 To whom is the scheme of Liberalised Remittance Scheme (LRS) applicable?

A.1 The remittance under this scheme is applicable only to resident individuals including minors. The Scheme is not available to corporates, partnership firms, HUF, Trusts, etc.

It is mandatory for the resident individual to provide his/her Permanent Account Number (PAN) to make remittance under the Scheme.

Q.2 What is the maximum permissible remittance limit under this scheme?

A.2 The permissible remittance limits changed over a period of years. Since 26th May 2016 the limit is set at USD 2,50,000/- per financial year.

Q.3 This scheme (LRS) can be used for which kinds of transactions?

A.3 Under the LRS, Authorised Dealers may freely allow remittances by resident individuals up to USD 2,50,000 per Financial Year (April-March) for:

(a) Any permitted capital account transaction; or

(b) Any permitted current account transaction; or

(c) A combination of both

Q.4 What are the permissible capital account transactions by an individual under LRS?

A.4 The permissible capital account transactions by an individual under LRS are:

(a) Opening of foreign currency account abroad with a bank.

(b) Acquisition of immovable property abroad.

(c) Overseas Direct Investment (ODI).

(d) Overseas Portfolio Investment (OPI).

(e) Extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013 subject to terms & conditions.

Banks should not extend any kind of credit facilities to resident individuals to facilitate capital account remittances under the Scheme

Q.5 What are the permissible current account transactions by an individual under LRS?

A.5 The permissible current account transactions by an individual under LRS are:

(a) Private visits (other than to Nepal & Bhutan)

All tour related expenses including cost of rail/road/water transportation; cost of Euro Rail; passes/tickets, etc. outside India; and overseas hotel/lodging expenses shall be subsumed under the LRS limit. The tour operator can collect this amount either in Indian rupees or in foreign currency from the resident traveller.

(b) Gift/donation

Any resident individual may remit up-to USD 2,50,000 in one FY as gift to a person residing outside India or as donation to an organization outside India.

(c) Employment

A person going abroad for employment can draw foreign exchange up to USD 2,50,000 per FY from any Authorised Dealer in India.

(d) Emigration

A person wanting to emigrate can draw foreign exchange from AD Category I bank and AD Category II up to the amount prescribed by the country of emigration or USD 250,000. Remittance of any amount of foreign exchange outside India in excess of this limit may be allowed only towards meeting incidental expenses in the country of immigration and not for earning points or credits to become eligible for immigration by way of overseas investments in government bonds; land; commercial enterprise; etc.

(e) Maintenance of relatives abroad:

A resident individual can remit up-to USD 2,50,000 per FY towards maintenance of relatives ['relative' as defined in Section 2(77) of the Companies Act, 201310] abroad

(f) Business trip:

Visits by individuals in connection with attending of an international conference, seminar, specialised training, apprentice training, etc., are treated as business visits. For business trips to foreign countries, resident individuals can avail of foreign exchange up to USD 2,50,000 in a FY irrespective of the number of visits undertaken during the year. However, if an employee is being deputed by an entity for any of the above and the expenses are borne by the latter, such expenses shall be treated as residual current account transactions outside LRS and may be permitted by the AD without any limit, subject to verifying the bonafides of the transaction.

(g) Medical treatment abroad:

Authorised Dealers may release foreign exchange up to an amount of USD 2,50,000 or its equivalent per FY without insisting on any estimate from a hospital/doctor. For amount exceeding the above limit, Authorised Dealers may release foreign exchange under general permission based on the estimate from the doctor in India or hospital/ doctor abroad. A person who has fallen sick after proceeding abroad may also be released foreign exchange by an Authorised Dealer (without seeking prior approval of the Reserve Bank of India) for medical treatment outside India. In addition to the above, an amount up to USD 250,000 per financial year is allowed to a person for accompanying as attendant to a patient going abroad for medical treatment/ check- up.

Q.6 What remittance facility is available for students pursuing their studies abroad?

A.6 AD Category I banks and AD Category II, may release foreign exchange up to USD 2,50,000 or its equivalent to resident individuals for studies abroad without insisting on any estimate from the foreign University. However, AD Category I bank and AD Category II may allow remittances (without seeking prior approval of the Reserve Bank of India) exceeding USD 2,50,000 based on the estimate received from the institution abroad.

Q.7 What kind of remittances are not permissible under the LRS scheme?

A.7 The remittance facility under the Scheme is not available for the following:

(a) Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000.

(b) Remittance from India for margins or margin calls to overseas exchanges /overseas counterparty.

(c) Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market.

(d) Remittance for trading in foreign exchange abroad.

(e) Capital account remittances, directly or indirectly, to countries identified by the Financial Action Task Force (FATF) as "non- cooperative countries and territories", from time to time.

(f) Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.

Q.8 What are the conditions for rupee loans given to NRI/PIO relative under the scheme?

A.8 Resident individual is permitted to lend to a NRI/PIO relative ['relative' as defined in Section 2(77) of the Companies Act, 201315] by way of crossed cheque/ electronic transfer subject to the following conditions:

(a) The loan is free of interest and the minimum maturity of the loan is one year;

(b) The loan amount should be within the overall limit under the Liberalised Remittance Scheme of USD 2,50,000 per financial year available for a resident individual. It would be the responsibility of the resident individual to ensure that the amount of loan granted by him is within the LRS limit and all the remittances made by the resident individual during a given financial year including the loan together have not exceeded the limit prescribed under LRS;

(c) The loan shall be utilized for meeting the borrower's personal requirements or for his own business purposes in India.

(d) The loan shall not be utilized, either singly or in association with other person for any of the activities in which investment by persons resident outside India is prohibited, namely:

(i) The business of chit fund, or

(ii) Nidhi Company, or

(iii) Agricultural or plantation activities or in real estate business, or construction of farm houses, or

(iv) Trading in Transferable Development Rights (TDRs).

(e) the loan amount should be credited to the NRO a/c of the NRI / PIO. Credit of such loan amount may be treated as an eligible credit to NRO a/c.

(f) the loan amount shall not be remitted outside India; and

(g) repayment of loan shall be made by way of inward remittances through normal banking channels or by debit to the Non-resident Ordinary (NRO) / Non-resident External (NRE) / Foreign Currency Non-resident (FCNR) account of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted.

Q.9 Should the bank permit remittance under the LRS for resident individuals opening new accounts?

A.9 The applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittances for capital account transactions. If the applicant seeking to make the remittances is a new customer of the bank, Authorised Dealers should carry out due diligence on the opening, operation and maintenance of the account. Further, the Authorised Dealers should obtain bank statement for the previous year from the applicant to satisfy themselves regarding the source of funds. If such a bank statement is not available, copies of the latest Income Tax Assessment Order or Return filed by the applicant may be obtained.

Q.10 Can remittances under the LRS facility be consolidated in respect of family members?

A.10 Remittances under the facility can be consolidated in respect of close family members subject to the individual family members complying with the terms and conditions of the Scheme. However, clubbing is not permitted by other family members for capital account transactions such as opening a bank account/investment/purchase of property, if they are not the co-owners/co-partners of the investment/property/overseas bank account. Further, a resident cannot gift to another resident, in foreign currency, for the credit of the latter's foreign currency account held abroad under LRS.

Q.11 Can a sole proprietor do a remittance under LRS?

A.11 In a sole proprietorship business, there is no legal distinction between the individual / owner and as such the owner of the business can remit USD up to the permissible limit under LRS. If a sole proprietorship firm intends to remit the money under LRS by debiting its current account then the eligibility of the proprietor in his individual capacity has to be reckoned. Hence, if an individual in his own capacity remits USD 250,000 in a financial year under LRS, he cannot remit another USD 250,000 in the capacity of owner of the sole proprietorship business as there is no legal distinction.

FEMA – Miscellaneous

1. In the case of resident individuals, the foreign exchange received/realised/ unspent/ unused should be surrendered within 180 days. This provision is not applicable to foreign currency of Nepal & Bhutan.

2. A person resident in India can retain foreign currency notes, bank notes and foreign currency travellers' cheques not exceeding US$ 2000 or its equivalent in aggregate, provided that such foreign exchange in the form of currency notes, bank notes and travellers cheques;

(a) Was acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or

(b) Was acquired by him, from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation; or

(c) Was acquired by him by way of honorarium or gift while on a visit to any place outside India; or

(d) Represents unspent amount of foreign exchange acquired by him from an authorised person for travel abroad.

3. Any person resident in India, may take outside India (other than to Nepal and Bhutan) Indian currency notes up to an amount not exceeding Rs.25000/- per person. He can also bring into India from any place (other than to Nepal and Bhutan) Indian currency notes up to an amount not exceeding Rs.25000/- per person.

4. **A person** may send into India without limit foreign exchange in any form other than currency notes, bank notes and travellers cheques or/and bring into India from any place outside India without limit foreign exchange after making declaration.

   It shall not be necessary to make declaration (in Form CDF) where the aggregate value of the foreign exchange in the form of currency notes, bank notes or traveller's cheques brought in by such person at any one time does not exceed US$10,000 (US Dollars ten thousands) or its equivalent and/or the aggregate value of foreign currency notes brought in by such person at any one time does not exceed US$ 5,000 (US Dollars five thousands) or its equivalent

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